3-28-1990

Hearing on Determinate and Indeterminate Sentencing

Joint Committee for Revision of the Penal Code

CALIFORNIA LEGISLATURE

JOINT COMMITTEE FOR
REVISION OF THE PENAL CODE

SENATOR KENNETH MADDY, CHAIRMAN

Hearing on

DETERMINATE AND INDETERMINATE SENTENCING

Wednesday, March 28, 1990
3191 State Capitol
Sacramento, California

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Nancy E. Marshall, Executive Assistant

California Legislature

Joint Committee for Revision of the Penal Code

SENATOR KENNETH L. MADDY
CHAIRMAN

1100 J STREET
SUITE 320
SACRAMENTO, CA 95814
(916) 322-35 9

COMMITTEE STAFF

EDWARD R. COHEN, J.D.
CHIEF COUNSEL

MARIA HILAKOS HANAE
COUNSEL

NANCY MARSHALL
EXECUTIVE ASSISTANT

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California Legislature

Joint Committee for Revision of the Penal Code

SENATOR KENNETH L. MADDY
CHAIRMAN

1100 J STREET
SUITE 320
SACRAMENTO, CA 95814
(916) 322-3519

COMMITTEE STAFF:

EDWARD R. COHEN J.D.
CHIEF COUNSEL

MARIA HILAKOS HANKE
COUNSEL

NANCY MARSHALL
EXECUTIVE ASSISTANT

DETERMINATE AND INDETERMINATE SENTENCING

ISSUES

I. History of DSL -- Why was it enacted? What are its goals?

II. Are inmates sentenced under ISL or DSL better behaved in prison?

III. Is rehabilitation more effective under ISL or DSL?

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V. Are certain crimes or criminals better treated under ISL, DSL, or a hybrid system? Is a hybrid system possible that will combine the best features of ISL, DSL, thereby better meeting the public goal of freedom from victimization?

California Legislature

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HEARING AGENDA

Wednesday, March 28, 1990, 9 a.m.
State Capitol, Room 3191
Sacramento, CA

DETERMINATE AND INDETERMINATE SENTENCING

9:00 am -- Opening remarks: Senator Kenneth L. Maddy

-- Overview of why DSL was enacted. What are its goals? Has it met its objectives? Is there a relationship between rate of incarceration and crime rates?

Senator John Nejedly, author of Determinate Sentencing
Judge Steven Z. Perren, Superior Court Judge, Ventura County
Greg Harding, Executive Director, Blue Ribbon Commission

9:45 am -- Inmate behavior: Are inmates sentenced under ISL or DSL better behaved?

Don Novey, State President, California Correctional Peace Officers Association, Sacramento

10:00 am -- Rehabilitation: Is rehabilitation more effective under ISL or DSL?

T.L. Clannon, M.D., former Staff Psychiarist--California Department of Corrections Medical Facility, Vacaville

10:20 am -- Break (10 minutes)

10:30 am -- Inmate preparation for release -- ISL vs. DSL. Public safety.

David Brown, Commissioner, Board of Prison Terms, Sacramento
Jim Dowling, Chief Deputy Commissioner, Board of Prison Terms, Sacramento

11:00 am -- 1:00 pm
Is public safety better provided by ISL, DSL or a hybrid system? Are certain crimes or criminals better treated under ISL, DSL or a hybrid system? Is a hybrid possible that combines the best features of ISL/DSL, thereby better meeting the public goal of freedom from victimization?

Justice James Ardaiz, Associate Justice 5th District Court of Appeal, Fresno
Mark Arnold, Chief Assistant Public Defender, Yolo County, California Public Defenders Association
Rick Lennon, Attorney, California Attorneys for Criminal Justice, Los Angeles
Gary Mullen, Executive Director, California District Attorneys Association, Sacramento

SUMMARY OF HEARING

ON

DETERMINATE AND INDETERMINATE SENTENCING

SUMMARY OF HEARING ON

DETERMINATE AND INDETERMINATE SENTENCING

The public's outcry over release of prisoners when they may still pose a threat to public safety has led to questioning of the determinate sentencing law which went into effect in 1977.

The Joint Committee for Revision of the Penal Code held a hearing intended to assist the Legislature in evaluating the determinate sentencing system. The purpose of the hearing was to examine whether the goal of uniformity and equity results in the best public protection and the best use of our limited prison resources.

Witnesses were invited to comment on the following issues:

-- Why was DSL enacted and what are its goals? Has it met its objectives?

-- Are inmates sentenced under ISL or DSL better behaved in prison?

-- Is rehabilitation more effective under ISL or DSL?

-- Is public safety better provided by ISL, DSL, or a hybrid system?

-- Are certain crimes or criminals better treated under ISL, DSL, or a hybrid system? Is a hybrid system possible that will combine the best features of ISL and DSL, thereby better meeting the public goal of freedom from victimization?

The underlying reason for the change from indeterminate to determinate sentencing was fairness. It was shown that statewide there was disparity in sentences, based on race, and ethnic and educational background. There was also discontent among inmates due to the uncertainty as to the amount of time to be served, and the proponents argued that enactment of DSL would reduce prison violence.

The testimony suggested that determinate sentencing generally has brought more uniformity and fairness to the state's penal system than under ISL as it was administered before 1977. However, disparity in sentencing from county to county seems evident under determinate sentencing. Testimony and Department of Corrections data also indicated that the level of prison violence did not decrease with DSL.

Several witnesses stated that determining whether a person is still a threat to society is possible using a parole board under the indeterminate sentencing law. Other witnesses questioned the ability of a parole board to determine whether an inmate is still a threat to society.

Under the former indeterminate system, more preparations went into a prisoner's release. However, it was also suggested that rehabilitation can be provided under both indeterminate and determinate sentencing.

The consensus seemed to be that some offenses should carry an indeterminate sentence. It was suggested that a starting place would be those offenses listed in Penal Code Section 1192.7, which

lists "serious felonies." Some serious offenses should carry an indeterminate sentence so as to address the concerns of whether an individual constitutes a continued threat to the public. Robbery, burglary and drug offenses are well served by DSL, but indeterminate sentences are better for habitual offenders and mentally disordered violent offenders, or those whose behavior clearly demonstrates an obvious community danger. Also suggested was indeterminate sentencing for offenders when convicted and incarcerated a second time.

Most witnesses agreed that the Legislature, not the judge, should decide which offenses should carry an indeterminate sentence.

KEY POINTS OF WITNESSES'S TESTIMONY

Senator John Nejedly, author of Determinate Sentencing

Basis for SB 42 was fairness -- fairness was the issue. We found disparity in sentences, based on race, ethnic and educational background. There was discontent among inmates from uncertainty on time to be served.

At the time of passage of DSL, the facilities aspect was considered. The point was made that under DSL more persons would be sentenced and for longer periods of time.

Two problems omitted from SB 42 were the habitual offender and the extraordinary offender who draws public attention; i.e., the mentally disordered violent offender.

Judge Steven Z. Perren, Superior Court Judge, Ventura County

The judges are receiving a mixed message. They're to be more discriminating on who should be sent to prison, yet more laws are passed requiring mandatory incarceration.

We should retain indeterminate sentences for those offenders who are a danger to the community and for the high publicity case. We already have or had some ways to retain prisoners -- narcotics offender statute and mentally disordered sex offender (now repealed).

One possibility is to have a high end possibility. Persons, who should be dealt with under an indeterminate system, are violent offenders, weapons users, and drug reoffenders.

Greg Harding, Executive Director, Blue Ribbon Commission

In 1988, 46,000 prisoners spent less than 1 year in jail, 32,000 spent less than 6 months, and 20,000 spent less than 3 months. This is a result of receiving credit for pretrial time spent in the county jail.

We need intermediate sanctions between probation and state prison.

Don Novey, State President, California Peace Officers Association, Sacramento

Under ISL, inmates were forced to program, to get an education. Also, any infractions went into their record and affected parole consideration.

We should use determinate sentencing for the first time offender and indeterminate for the second commitment. We need an enhancement for smuggling drugs into prison.

T.L. Clannon, M.D., former Staff Psychiatrist -- California Department of Corrections Medical Facility, Vacaville

In 1975, one out of four parolees was returned to prison. Today, two out of three parolees return to prison within two years from release -- this is for new offenses and new victims. We're no longer concerned with outcome.

The research shows that we can recognize risk levels. Mandatory counseling does work. It's somewhat analogous to requiring alcoholics to undergo treatment or lose their job.

Any indeterminate sentence should be given at the beginning of a sentence to help a prisoner rehabilitate. We shouldn't confine ISL to the worst offender. Those who can benefit most from an indeterminate sentence are those who might benefit from rehabilitation. The first and second degree murderer needs punishment -- they probably can't benefit from rehabilitation. Yet, that is who receives the indeterminate sentence. We should make ISL available to every judge for every offense.

David Brown, Commissioner, Board of Prison Terms, Sacramento

Life prisoners generally have a lower return rate than DSL prisoners.

Some offenses should carry an indeterminate sentence. A

starting place would be those offenses listed in Penal Code Section 1192.7, which lists "serious felonies."

Jim Dowling, Chief Deputy Commissioner, Board of Prison Terms, Sacramento

By determining suitability for release, the Board of Prisons Terms does consider risk to public safety. In 1978, there was a parole violation rate of approximately 20%; in 1988, it was 87%.

We can predict who will reoffend.

The fairness argument or concern has overshadowed the need to hold a "hammer" on prisoners as to their release date. We need to hold them accountable for their behavior.

Justice James Ardaiz, Associate Justice 5th District Court of Appeal, Fresno

The four prongs of punishment are: rehabilitation, deterrence, retribution, and isolation.

DSL does not serve the functions of rehabilitation, isolation, or public safety.

The recidivism rate is climbing dramatically under our current sentencing structure. DSL should be limited to less serious crimes and we should use ISL for more serious crimes. PC§1192.7 which lists serious felonies is a start, but perhaps not all those offenses listed as serious felonies should carry an indeterminate sentence.

We shouldn't give the judge the choice of an indeterminate or determinate sentence. The Legislature should determine which offenses would carry an indeterminate sentence.

For the low end crimes, as non-violent and property crimes, the determinate sentence system should apply. Perhaps indeterminancy should apply to narcotic crimes in order to either rehabilitate or remove these offenders.

Mark Arnold, Chief Assistant Public Defender, Yolo County, California Public Defenders Association

DSL hasn't achieved uniformity. We have disparity in sentencing from county to county.

Rick Lennon, Attorney, California Attorneys for Criminal Justice, Los Angeles

Most inmates are in prison for robbery, burglary and drug crimes. These offenses are well served by DSL.

The problem with the Board under the ISL is that it makes its decision on "gut feelings." We should keep indeterminancy in the form of a habitual offender law and a mentally disordered violent offender law.

Perhaps a hybrid approach would work. The court imposes a determinate sentence with a minimum and maximum term. Thus, the Board could release before the end of the term.

Gary Mullen, Executive Director, California District Attorneys Association, Sacramento

The parole board is too remote -- it can't predict whether someone is reformed.

TESTIMONY OF HEARING

ON

DETERMINATE AND INDETERMINATE SENTENCING

CHAIRMAN KENNETH MADDY: The Joint Committee for Revision of the Penal Code is in session on the issue of determinate and indeterminate sentencing. I appreciate the fact that our witnesses are here today. We will be joined by various members of the Committee. As usual, this time of year we have a very crowded calendar and I know that all of them will be here at one time or another and have been provided the materials.

Enactment of the Determinate Sentencing Law in 1976 resulted in a major change in sentencing philosophy and in the decision makers.

The Indeterminate Sentencing Law in effect for all felonies from 1917 until 1976 had as its goals rehabilitation and incapacitation. Public safety was to be obtained by either changing criminal behavior or by making sure that those who could not be rehabilitated remained in prison. In the 1970's a series of court challenges introduced due process reforms to limit what many felt were unfair subjective decisions by the Adult Authority.

In 1976 at the end of the session, the Legislature established the Determinate Sentencing Law for all felonies except first degree murder, kidnaping for ransom, train wrecking, assault by a life prisoner, and exploding a destructive device causing mayhem or great bodily injury.

Under determinate sentencing, the sentencing decision is divided between the Legislature and the courts. The Legislature establishes a mitigated, normal, and aggravated term for each felony, and various enhancements. The judge in each case chooses the actual term within the legislatively imposed constraints. The

purpose of these changes was to make imprisonment more equal and proportionate. Philosophically, those criminologists who urged determinate sentencing postulated that criminals make rational decisions on a cost benefit analysis, knowing the specific cost of a crime would be a deterrence. There was also suggested that a determinate sentence reduces prison violence.

When the Determinate Sentencing Law was proposed, the question of prison overcrowding was raised, but the final legislation did not address this problem. While the law prescribes durations of imprisonment, it does not effectively regulate judges' "in-out" choice of whether or not to commit offenders to prison. With intake into the prison system largely uncontrolled, there has been a large rise in the rate of prison commitments. There have also been numerous cases of public outcry at sentences being too lenient.

The purpose of today's hearing is to examine whether the goal of uniformity and equity in sentencing results in the best public protection and the best use of our limited prison resources.

Since enactment of the Determinate Sentencing Law, we have added or returned to using indeterminate sentencing for attempted first degree murder, second degree murder, aggravated mayhem, which is a bill I authored in 1986; habitual offenders, habitual sex offenders, certain drug offenses, and attempted assassination. The projected prison population by 1994 is 136,640, a 64.9 percent increase over the 1989 population. Even deleting drug offenses in the prison population, it will still climb to over 100,000 by 1994. In 1988, the most recent available data from the Bureau of

Criminal Statistics, the crime rate in California was 3,321 crimes per 100,000 population, compared to a 2,426.8 per 100,000 population for the United States less California. We ranked fourth in crimes, being exceeded by Texas, Florida, and the District of Columbia.

Although I support the idea of fairness in sentencing, I wonder whether any of the gains we may have achieved are outweighed by the rising prison costs. I wonder whether public safety is being served in our quest for uniformity.

Would we be better off by limiting the use of determinate sentencing to the less serious crimes, and using the indeterminate sentencing for the more serious crimes? Would we be better off if the judge could have a choice of using the DSL or the ISL based on the court's assessment of likelihood of re-offense? Would we be better off having much wider ranges for DSL, having the judge set the term and giving the Board of Prison Terms the authority to parole prisoners before the end of that term based on the kind of criteria that is now used for ISL offenses? Would we be better off leaving the relationship between DSL and ISL as it is, and focusing on whether the courts should be granted more authority on whether to sentence persons to prison?

I have no preconceived notion of what is best. I'm looking, however, for that which will give us the most public safety for the resources that can reasonably be spent on incarceration.

I'm joined here by Senator Robert Presley, Senator Robert Beverly, who are members of the Committee, and also by Senator Bill Lockyer, who is now the Chairman of the Judiciary Committee

and who has a proposal and a bill that he has been working for some time on in this subject matter.

Our first witness is a former colleague and a good friend, State Senator John Nejedly. He was the author of California's Determinate Sentencing Law in 1976, which incidentally was a time when I was Chairman of the Assembly Criminal Justice Committee and went through this process once before. So Senator Nejedly, good to see you.

Our opening is going to be an overview of why DSL was enacted and what are its goals, has it met its objectives, and is there a relationship between the rate of incarceration and crime rates?

SENATOR NEJEDLY: You know, it was rather interesting in this scenario of deja vu. When I came in I met Senator Presley and he said, "why are we here today and whatever the reason is you're the one that caused it," so (laughter) I start out with a bit of a handicap. But I will, if I can, within the limitations of time, describe something of the historical background out of which SB 42 arose -- some of the rationale and some of the problems which we knew would be created by this legislative change in the sentencing process.

If you could remind me when I'm, say, a couple of minutes away from your time constraints...

CHAIRMAN MADDY: All right.

SENATOR NEJEDLY: I would appreciate it. I'll try to watch it, but sometimes I get carried away, you know.

But in any event, when I was elected District Attorney in Contra Costa County in 1958, I had between June and January to

prepare for that occupation and I spent some time in L.A. and in Santa Clara County, which were the then two prosecuting systems with the best statistical backgrounds in the state. So I went there and spent some time reviewing it. And one of the common phenomenon that I found after those experiences in the statistics was simply that there was a terrible disparity in the state in the sentencing process and the sentences served, the kinds of crimes that received attention in the trial courts and the kinds of disassociation with reality of the sentencing by the judges in different parts of the state.

When we had some time during the course of those twelve years in the office to refine some of that statistical background, we began to find that there was a substantial disparity simply on the basis of racial backgrounds, ethnic backgrounds generally, educational backgrounds, personal appearances, and a number of other factors which led to a very serious discrimination, really it is a most appropriate word, in the sentencing process determined by the characteristics of the person, not the crime.

This process followed through to the Adult Authority and the Board of Women's -- I always forget the proper name for that. You might help me out a bit. The Women's Board of [Terms and] Parole and what's the other word? Okay, you don't know it either, so I feel better now. But in any event, it became quite apparent that what we were sentencing people for and the whole background of criminal statistics was arising on a very disparate basis, which was really, to me, at least, quite unfair. You found that blacks, for example, were arrested more often, were tried more often, were

convicted more often, and a great deal of the criminal statistics which began to be developed in the Attorney General's Office really were unrefined and didn't reflect that kind of disparity in sentencing.

We found the same thing as we attended hearings of the Adult Authority where different hearing officers had different judgments, different values. The uncertainties of the circumstance by the way, to go over to San Quentin Prison every Thursday night with the Seven Step Program, and we tried to associate directly with the people who were were involved in the sentencing procedure, which I respectfully suggest if this subject is going to be re-reviewed, be done as well, because we found uniformly and particularly throughout the state and as we went to Attica and Illinois and Michigan and the prison riots there, there was an underlying thread of discontent simply arising from the fact that the time that was ultimately to be served was indefinite. It lay upon personalities. It lay upon the guards and the prison, upon the particular hearing officer who heard the applications for parole, the various and changing criteria for the fixing of sentences under the Indeterminate Act, and particularly in the Attica situation, which received national attention and a whole series of hearings which we attended, that theme was obviously universal. The uncertainty of the situation was, and the unfairness of it, the changing criteria -- led to a great deal of prison unrest.

And I might comment, if I may, in passing on one of the comments you made, Mr. Chairman, when you talked about efficiency

of the judicial system. When SB 42 was being considered and while it did not approach the problem of facilities for incarceration, there was a conjunctive committee -- as I recall the name was -- I believe we still have Senator Presley as the Chairman...

CHAIRMAN MADDY: Still Chair.

SENATOR NEJEDLY: Aren't you chairman of the Joint Committee on Prison Operations?

SENATOR PRESLEY: Prison Construction and Operation.

SENATOR NEJEDLY: Senator Way and I were on that committee. We went through the various prisons of the state and at the same time, even in the arguments on SB 42, we made the point that there were going to be more people sentenced, there were going to be more people sentenced for longer periods of time, and there had to be concomitantly a total revision of the prison system in California. While you're correct in saying it wasn't part of the bill, you have to remember, Senator, it was very difficult to get this bill even in its present form, let alone this problem of spending millions and millions of dollars.

We, for example, recommended that Folsom Prison be shut down. We recommended that San Quentin be shut down and completely rebuilt in an entirely different kind of a physical concept, something like the design seen in your new prison at Wasco today.

But I think you should remember that no part of the system is going to work or no procedural part of the system is going to operate effectively unless you have conjunctively all of the other facilities that are necessary in place to accommodate the demands of that system. And if you are going to have longer periods of

incarceration and more crimes that are sentenced to state prison and more people therefore who are going to state prison, you obviously have to accommodate that by additional facilities or the whole system isn't going to work.

So sometimes when you may be focusing on determinate and indeterminate sentence, you might remember that you're only dealing with a very small part of the total problem. And unless you provide the facilities like the Valdez spill or whatever, unless you have the facilities to accommodate the responsibilities of sentencing the system doesn't work and to pick out one part of it and question its universality in creating a problem may lead to some very serious problems.

But in any event, because of that disparity, because of the discontent, because of the unfairness, which essentially appealed to me, we had considered action for a number of years from 1970 and 1971 to approach this problem on a state level, but circumstances never were quite propitious. There was no real enthusiasm for any substantial change. The Administration was opposed to the change. The Administration wanted to approach it on an administrative basis and it all came to a climax in the early '70s when the Governor suggested that we solve the problem of overcrowding in the prison system simply by making a selective release of thousands of prisoners in order to accommodate the influx of new people who were coming into the system.

CHAIRMAN MADDY: They did that in 1974, I think.

SENATOR NEJEDLY: That's right. And that kind of led to a more demanding climate for change and so SB 42 came into being.

I might tell you, there's an old adage that politics makes strange bedfellows. I want to point out to the Committee who was really involved in that process because the strangest combination in the world occurred, and you may be familiar with it, Senator. But Mike Salerno, who was on our staff; Lowell Jensen, who was then the District Attorney of Alameda County; Jerry Brown, if you can figure a more incongruous combination than that. But in any event, I understand, Senator Lockyer, you are Chairman of the Senate Judiciary Committee now. Al Song was Chairman at that time and he was one of the principal authors, and remember Clinton Duffy. I don't know whether you recall him or not. One of the great humanitarians of our time, former warden of San Quentin Prison. Ray Parnus, who was a professor of law at University of California at Davis. Tony Kline, who was the Governor's Executive Secretary. The Prisoners' Union was represented by Willie Holder, and others who I don't recall. But without anyone of those, nothing would have happened on this legislation. Because of that combination and the hearings, the problems we had with the Assembly Criminal Justice Committee, we dropped the bill on two occasions simply because we couldn't reconcile our views with ACLU and others. But in any event, we did find a reconciliation and a composition.

There were two problems that were left out of the bill. One of them was the habitual criminal bit and the other was simply how to deal with the extraordinary circumstance. It got great

publicity that drew attention of the public to the crime and how do you deal with that exceptional circumstance?

CHAIRMAN MADDY: We were referring to, I think, the mentally disordered violent offenders.

SENATOR NEJEDLY: That's correct.

CHAIRMAN MADDY: Because I carried the bill and lost it the following year. SENATOR NEJEDLY: Right. When the bill left the Senate, we had these things in it. When it got out of the final -- what's the right word for it -- the Conference Committee...

CHAIRMAN MADDY: Conference Committee, right.

SENATOR NEJEDLY: When the bill came out of the Assembly, we had made at that time, in the normal practice, you get a bill out of committee, then you amend it, so the Committee would never have passed it out in that form. We didn't play that way. I didn't like that approach. We told them we would go to conference. Everybody would have an opportunity, but there would be no author's amendments to circumvent the Assembly Committee. And we really had difficulties there. I don't mean that personally.

CHAIRMAN MADDY: No, I remember distinctly that I was essentially calling that a sterile gavel, you know, a Bill Bagley special.

SENATOR NEJEDLY: So it was a compromise bill. It essentially reached the issue of fairness and for myself, I would like to repeat that. The essential approach was people were treated fairly, whether they were black, white, brown or any other group of people in the criminal justice system. The whole panoply

of discussion and events was opened to the public. You could never attend a hearing. I had to get special permission, for example, even as a district attorney, to go to a hearing on cases in the state prison under the old system. It was not available to the public, but here at least the thing is out in the open. We know now at least what's going on. It's in the jurisdiction of the Legislature. At that point, it should be obvious it's not an administrative function anymore. It's a legislative function. You have the capacity to deal with it.

In fact, the same similar hearings are going on on a federal level now on the present system and in the United States criminal justice system. But I would hope seriously that you don't lose sight of the issue of fairness. That you don't lose sight of the issue. The issues are now out before the public where the public can see them and finally that you recognize this issue.

If you have a thousand-room hotel and everyone who is a guest at that hotel stays for a year, there's only a thousand people you can put in that hotel at any one time for a year. If you want longer sentences, then you're going to have more facilities. If you don't have the facilities, don't blame the system for the incapacity of the system to deal with the function that it was charged to deal with.

CHAIRMAN MADDY: Thank you, Senator. Do we have any questions of Senator Nejedly?

SENATOR BILL LOCKYER: Do you recall the nature of the opposition at the time the bill finally was agreed to and moved

forward --- either groups or the philosophical basis for their concerns?

SENATOR NEJEDLY: Well, I don't want to put this off on the ACLU because actually it's a very constructive group and I think in a number of cases they serve an appropriate purpose, so I don't want this to sound critical.

SENATOR LOCKYER: But that was the opposition?

SENATOR NEJEDLY: That was the opposition essentially. The opposition was based on the sentences that were proposed were too long. They were too onerous. They included the habitual offender basis and we had a way of dealing with the...

CHAIRMAN MADDY: Mentally disordered, violent offender.

SENATOR NEJEDLY: Right, I always forget that one. That's one that my memory doesn't want to accommodate, but in any event, that situation. And particularly they were raising the point that the sentences that were proposed in California were substantially higher than the five industrial eastern states, particularly New York and New Jersey and Illinois and Michigan and that...

SENATOR LOCKYER: So it was length of sentences, essentially.

SENATOR NEJEDLY: Length of sentences and those two other factors.

CHAIRMAN MADDY: Senator Beverly.

SENATOR ROBERT G. BEVERLY: On that point, wasn't there also opposition from the right. I remember hearing from a certain chief in Los Angeles, now a senator and from a judge in San Diego regularly.

SENATOR LOCKYER: That's right.

SENATOR BEVERLY: They thought the sentences were not tough enough. It came from both sides.

SENATOR NEJEDLY: Well, it's hard to believe that bill ever got out of the Legislature, actually. And it was a last minute thing. Last night, twelve o'clock, the whole bit. Lowell Jensen came up here arguing for it. Senator Beverly recalls the situation.

SENATOR BEVERLY: Yes.

SENATOR NEJEDLY: But in any event, the argument that I had, apparently, that was persuasive was simply that it was fair and it was out in front where everybody could see it and unless you put the other facilities in to make the system work, don't blame the...

CHAIRMAN MADDY: Thank you, Senator. Good to see you.

Senator Lockyer wants to follow you with an update as he sees it. You can join us if you like.

SENATOR LOCKYER: Mr. Chairman, I wanted to just call your attention to what's happened since the time that this law was adopted 14 years ago. The ACLU may have been right when they predicted at the time, and I think some others did that were supporters of the bill, that gradually over time in California sentences would be lengthened. So not only were they longer than some thought reasonable at the outset, but that over time they would stretch that way.

When the law was enacted, judges had a little 8-1/2 by 11 piece of paper that were sentencing guidelines. This is what they have now. They stopped trying to even print this because it's gotten even more complicated since 1988, but you can see it if you have microscopic vision, the incredible complexity of our sentencing structure. It's largely a consequence of each year there are another dozen or two dozen bills that add on an enhancement, a change in sentencing procedure, whatever.

CHAIRMAN MADDY: You might show that to...

SENATOR LOCKYER: Pardon?

CHAIRMAN MADDY: You might turn it the other way.

SENATOR LOCKYER: Oh, turn it the other way, okay.

CHAIRMAN MADDY: Allow others to see it.

SENATOR LOCKYER: Chart. Judges tried and clerks, to put this on a computer program and they found that it was just so complex that you had to figure out every variable in order to enter it correctly in the computer. You might as well just compute it basically by hand anyhow, and so one of the consequences of this complexity is that in the last few years a study was done of criminal appeals. They found that one out of four successful criminal appeals was due to sentencing error by the judge. Just simply to compute the law and what we've done to it over the last 14 years.

I have been working on a measure now for a couple of years and I think this is the year it's going to go. It will be interesting to see if now we fix the old system and then decide

well, let's try something entirely new. But I guess that will be a debate for next or future years. But we're essentially trying to simplify all of this complexity and that is most easily shown in this chart, where rather than each crime having a set of characteristics and elements and sentencing possibilities and consecutives and no probations and so on, we just do an A, B, C, D, E and the debate becomes, well, is that a C or a B or a E or a D? Things of that nature.

Being reasonably sentencing neutral, except for the fact that in our current law for the kind of habitual offender that Senator Nejedly had talked about, we have caps and it is claimed that many of them know that when you do a dozen burglaries or a dozen armed robberies, which Senator Beverly has worked on this problem before, that's it. You can't get anymore time whether you do 300 of them or whatever. And cheaper by the dozen is one of our current policies that we hope to change so that the lids on the potential consecutive sentences will be removed to a substantial degree.

That bill is currently in the Assembly COP's committee and scheduled for a hearing again -- there's been a lot of them -- next week. One thing we've added that I think is important is to try to focus on those habitual offenders. We've talked about that over the years. It turns out the current habitual offender, this is not the mentally disordered but just the habitual offender, under the current law probably has resulted in fewer than ten people being sent to state prison as a habitual offender. The

requirements are so tight that it just is fairly meaningless. We're trying to make that stronger.

Anyhow, thank you for the chance just to mention this current effort. It does not readdress the determinate/indeterminate issue, other than to recognize that over the last decade there's been these changes in the sentencing structure and ones that most people think need to get readdressed if we're going to stay with the system at all.

CHAIRMAN MADDY: Thank you, Senator Lockyer. Any questions?

Judge Steven Perren, Superior Court Judge of Ventura County. Judge Perren, welcome.

JUDGE STEVEN Z. PERREN: Thank you very much, Mr. Chairman and Members of the Committee. It wasn't entirely clear to me exactly what direction to take in making a presentation to you on the issue before you. What is clear after listening to Senator Lockyer and, of course, he and I go back, I guess, about a year and a half at a conference at Asilomar when SB 25 was being worked through.

SENATOR LOCKYER: He's what we call a "sentencing junkie."

JUDGE PERREN: Yeah, I'm one of the people that understands that, which should call into grave concern whether or not you should listen to me at all.

SENATOR LOCKYER: Did you prepare the chart?

JUDGE PERREN: No, I wouldn't touch it, but I teach it and the entry level judge gets about a 12-hour course right at the outset on present sentencing practices. When I first started

teaching it five years ago, my instruction to them was, "you can understand it." I don't say that anymore. You can't. And that's a product of so many exemptions, classifications, qualifications, and what have you, that it really makes the Internal Revenue Code look simple. And really that doesn't make any sense at the present time because it has been gutted by designer crimes where somebody wants to get something into the books that's going to look good, I guess, and maybe one or two people ever be convicted of that offense and it really is a very confusing and difficult format.

From an eye towards simplification without any other qualification, certainly Senator Lockyer's bill is an improvement. I'm not as sanguine as he that it's going to have a significant effect on the prison population or altering sentencing in the final result. I think there necessarily will be some sentence creep. I think people look at that and think that the natural and inherent pressures on the judges will cause sentences to increase because there are no limitations. But at least the bill does give the judges the opportunity to sentence, which is something that is more and more being withdrawn from them.

My comments are really addressed to the question I think that you've asked and that is this interrelationship between indeterminate sentencing and determinate sentencing. In listening to the comments made and the economic considerations that have been suggested for prison reform, prison population -- focusing on those who really need to be there as distinguished from some who

perhaps are one time offenders or what have you. Certainly the Determinate Sentencing Law mandates that a person be sentenced irrespective of what their future criminality would be once they're in prison. Now the determination of future criminality is one that the judge must look to in deciding whether or not to send to prison. But once in the prison, it's out of the judge's hands.

The problem that seemed to emerge in reviewing your preliminary comments and a lot of the information that I've heard going along the way as to how do we discriminate between who goes to prison, the cost, the population, the like, is simply this. All of the remedies I've heard suggested concerning discriminating within the system, seem to ignore the fact that the system is run by the people who are first put into it. And there's really nothing being addressed to modifying judicial discretion in the placement of people in prison. You're saying, "Reduce prison populations or focus upon people who are in prison and let's pay the resources to deal with them." And then you turn to the judges on the other hand and you say, "But by the way, Judges, you must send people to prison" in a broad scheme of cases ranging from 'use a gun, go to prison,' which I doubt few people argue with, to, "are you aware that a person who possesses one gram of cocaine and is convicted of that and later possesses one gram of cocaine and is convicted of that, must go to prison?" Now that's required.

Now that may be okay, but if you're telling us to be more discriminating in the people we're sending, then you're not really

telling us that in the message that you're sending by the legislation that comes down every year further and further narrowing the scope of sentences that judges can make. In substance, the message that comes to the judges is we really can't figure out who should go to prison and who shouldn't, so let them all go. And I think statistically the numbers and percentages of people who are going to prison are increasing.

For example, there was a bill that came out last year. I don't know the number. I only know it by Penal Code section or Vehicle Code. It's Section 23175 of the Vehicle Code. I use this as an example because it's a great idea. Convert to a felony any person who drunk drives with three prior drunk driving convictions in seven years. Not a soul's going to quarrel with that. I think it's a great idea. As I recall the bill, it came out with no economic impact. I don't know who did that analysis, but that's utter madness. What you did was increase the caseload of the Superior Courts of the State of California across the board by ten percent. Certainly that's the case in our county. We have ten percent more cases to deal with than ever before. We had and we are sending in my county 65 to 70 percent of persons convicted of that offense to prison.

Now, you may say that's rather harsh with the person who is drunk-driving and gets convicted of having three priors. Problem is those aren't the people that are going to prison. People that are going to prison are the ones with five, six, seven and eight priors, who legitimately should go to prison I think, and I've

sentenced them there. But to say no economic impact and to talk in terms of how to reduce the cost of prisons and then to pass a bill like that is difficult.

SENATOR LOCKYER: The author's unknown?

CHAIRMAN MADDY: No, the unknown economic impact.

JUDGE PERREN: Well, I'll be surprised if it's not profound. In any event, the objective that is here it seems to me is, on the one hand, why modify what we have except to the extent that Senator Lockyer's bill perhaps takes and makes more intelligible the existing SB 42. I tried to play with this in my mind. Who are you after in trying to go to indeterminate sentencing? And it seems to me you're after basically two kinds of people and I think that was alluded to. You're dealing with the real danger to the community, but that's a function of the crime that person commits at the time as to how you sentence that person. Or you're dealing with the high profile, high publicity case when people go bonkers when that person is released.

Now, you had in place ways to deal with that and you have in place an indeterminate sentencing scheme that I haven't heard mentioned. For example, and I suggest to you the numbers would be awe-inspiring, a great number of people committed to prison are driven by either the use of drugs or that's intimately involved in their criminality. Well, you have an indeterminate sentencing statute in place right now for dealing with those and that's the narcotics offender statute. And a person convicted of an offense for which they are sentenced -- not can be, but in fact sentenced

to six years or less in prison, may in the discretion of the judge be committed to the California Rehabilitation Center. They are then kept in CRC for a period of time subject to the discretion of the warden and the staff at CRC. So you have an indeterminate sentencing plan.

You had an indeterminate sentencing plan ten years ago for mentally disordered sex offenders. That went in the toilet because it was really unpopular because people were getting out too soon. Unfortunately, by repealing that, what you did was throw the baby out with the bath water because you took away the authority of the legislation and of the prisons to keep in the identifiable serious offender under the mentally disordered sex offender statutes. And thus, people who are one time offenders, who are sentenced to prison for the maximum, which would be eight years, but clearly and identifiably are sex offenders, are being released back to the streets whereas they could be handled under MDSO statutes heretofore.

Senator Lockyer?

SENATOR LOCKYER: As I recall, we also had a constitutional defect and there was some judicial determinations that it was vague and well, the old criticisms of indeterminate sentencing were applied to...

JUDGE PERREN: Well, they're still keeping the ones who were in. There are maybe 20 or 25.

It seems to me that in your approach, you have to look to the kinds of crimes you're going to encompass in your bill and the

kinds of people you're going to catch in it. Because the really hard person that you're looking at is a very unique character and how you identify him and legislation that gives notice to the person of the offense that's going to get them caught up, I don't know how you draft that. The only way would be, number one, the habitual offender statutes, but to break into those statutes in California is very difficult. I don't know what the raw numbers are, but of the some 80-plus thousand inmates in the adult institutions in California -- the state institutions -- I would be surprised if the number of habitual offenders was in three digits. And that's just a guess on my part. I sentenced one person in eight years as a habitual offender and he merited it beyond all belief. He should have long ago been found to be that way.

But again we tend to draw up the bottom of the system by looking at the high end of the system and I think we have to be very careful about being discriminating in what we're doing. It seems to me you have to have, and I do not know how it would impact, but it was mentioned to me as I came in and now I'm drawing the same blank that my predecessor drew about this mentally disordered criminal offender and I'm not sure what that statute is.* If there is a procedure whereby you can identify an offender, post-judgment, and have subsequent proceedings that would allow for administrative extension of commitment and/or an additional finding by way of an enhancement at the trial time,

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*Article 4 (commencing with Section 2960) of Chapter 7, of Title 1, of Part 3, of the Penal Code.

that the person would at least be eligible for such findings, it seems to me you address the problem. What the constitutional thenrestrictions would be on that I absolutely don't know. It's certainly problematical when a person is punished and really doesn't know the long end, but we have an indeterminate provision for that even because in our not guilty by reason of insanity statute, you essentially have an indeterminate commitment and an extension even beyond any term prescribed if the person continues and persists in being a danger to the community.

So the next question it seems to me, and I'll conclude with this, is a question of focus and front end loading. The judge is going to have to be the one to make the initial decision. Are there statutes in place or soon to be in place, and I think it's recognized that that will likely be the case, that will allow for an appropriate handling of a given person for a given crime. Well, whether we talk of range of sentencing under the five criteria under Senator Lockyer's bill or existing three standards, it seems to me that you really have given the judge a wide range to deal with. If you're concerned with the terrible crimes, the mayhems, the manslaughters, and the situation that occurred in San Francisco where the low end was preposterous at that point, then you draft legislation that at least gives a high end that can recognize that unique offender which ought to be placed at the high end. And the judge does then have a range of sentencing. Even today, I will disagree slightly with Senator Lockyer. There are so many crimes now that are outside the limitation statutes

that virtually all violent offenders don't get freebies for their crimes. They do their time for their crimes if prosecuted.

So in sum, then, if I may suggest to you, and I certainly invite comment if anybody has any questions. I come to you as an empiricist in the sense that I haven't done any gross studies of what goes on. I can just tell you what goes on in the grinder down in the courtroom everyday and I sentence probably 200 people a year under our present system, and at one time when I was a criminal calendar judge, I sentenced about a thousand people in one year. Half the problem was figuring out what's just for the given offender. The other half of the problem was figuring out how I got to that point given the constraints that were imposed on what has become an absolutely Byzantine statute.

My last comment and I'll close with this is a prayer. And the prayer is this. Please, whatever you come to by way of a statute, just leave it alone. At least give the judges a fighting chance to understand the statute and to work with it. There are so many laws on the books that catch virtually every form of criminality and every means by which that crime can be committed that adding new and additional legislation certainly doesn't serve any interest in the courtroom. What other interests it serves I can't address.

CHAIRMAN MADDY: Well, thank you, Judge. Unless we adjourn for five years, you probably won't have the last part of your prayer.

JUDGE PERREN: I understand that, but I thought I'd give you the prayer anyway.

SENATOR LOCKYER: Mr. Chairman?

CHAIRMAN MADDY: Senator Lockyer.

SENATOR LOCKYER: I might add, that's the principal reason for going to five categories. It then becomes very difficult to say, "Well, add a year and add a...", you know, that kind of stuff.

JUDGE PERREN: Right.

SENATOR LOCKYER: Judge, if you were trying to be sentencing neutral and you wanted to create a system in which the bad guys were subject to lengthier terms, who would those be? I assume from your comments, knowing your comments in the past, we're talking about habitual criminals who just seem to be into the...

JUDGE PERREN: Well, there are triggers that come to my mind. The triggers that come to mind automatically are weapons involvement and those...

SENATOR LOCKYER: You want to send them up?

JUDGE PERREN: Yes. But the judge, again, should have discretion. I can give you parades of cases of people who had weapons incident to crimes who, I think, arguably, should not have gone to prison.

SENATOR LOCKYER: Or a vicarious situation.

JUDGE PERREN: Well, that's true, too. But even in a vicarious situation the problem with vicarious is they know that you give the gun to the 12-year-old on the robbery and they don't get touched. Why are we passing long bills? Or legislation providing for long terms? One is to deal with an offender and you asked me who that would be.

You got to deal with the drug problem in a realistic way and sending them to prison is not dealing with it in a realistic way. I mean that's the truth of it. You've got to do something else, than lock a drug abuser up. Now what you do, I don't know. Yes, keep it criminal. I'm not suggesting to the contrary. But you have to deal with the problem and putting them in prison is only exacerbating the problem and giving them a post-graduate degree in criminality.

Yes, you have to deal with the violent offender, the person who presents a clear danger to any citizen, and obviously we're talking about gang-related activities, we're talking about weapons use, and we're talking about the person who reoffends and is demonstrably a reoffender. Those are clear circumstances.

SENATOR LOCKYER: If you were spending new money there by increasing sentences and because of budget constraints had to reduce others, what would they be? It sounded like drug offenses would be one possible category...

JUDGE PERREN: Well, I mean, why don't you build a large ranch out in the desert and put all your drunk drivers out there that are going to prison. They're no danger as long as they're not behind the wheel. Even if they're drunk, as long as they're not behind a wheel, they're okay. Unfortunately, you can't keep them from going behind the wheel.

SENATOR LOCKYER: So maybe we could save some money in that area.

JUDGE PERREN: Well, it seems to be a high minimum security environment. Your drug offenders who are truly drug offenders, they just want to use their drugs and that is the statute focuses on the judge being required to determine that the criminality is a function of drugs, not drugs being a function of criminality, which are a large portion. Get them out. Beyond that you've got your habitual forgers and the like. And that's a question of the degree of intensity of supervision within an institution. I don't know that stuff and I'm not going to go out as an expert on that because I visited the institutions. I do not understand nor have I studied the techniques within the institutions. I'm just telling you where I am. The body is in front of me. And the mandate from the Legislature is in most cases, I have to send people to prison. In many cases, I have to send people to prison and I think that the Legislature ought to, at some point, and I would hope say, "Judges, do judicial things in a judicious manner" hopefully, and they ought to be left to that task.

CHAIRMAN MADDY: Thank you, again, Judge. Thank you. Members of the Committee?

JUDGE PERREN: Thank you very much.

CHAIRMAN MADDY: Mr. Greg Harding, Executive Director of the Blue Ribbon Commission. Mr. Harding?

MR. GREG HARDING: Mr. Chairman, thank you very much.

The Blue Ribbon Commission went out of business as of January of this year so actually I work for the Department of Corrections, but I acted as the Executive Director during its 18-month life.

And the report came out in January and lists about five recommendations in the area of sentencing. And, again, in the Blue Ribbon Commission's view, we were looking at sentencing in the context of what its impact is on state prison populations. And it might help a little bit to relay some of those impacts just to give you a context.

One of the things the Commission found was that in 1988 there were about 46,000 inmates who spent a year or less in state prison. There were about 32,000 who spent six months or less in state prison and about 20,000 inmates who spent three months or less in state prison. Clearly this is in part, the result of our sentencing law. If you break that down between parole violators and short-term new commitments, there's kind of a little interesting twist. Of that number, about 28,000 of the 46,000 -- about 28,000 were parole violators who spent 12 months or less in state prison. And about 18,000 were new commitments who were actually coming into state prison in their initial term and serving a year or less. Even more significant is that about 8,000 new commitments spent six months or less and about 5,000 new commitments spent three months or less in our prisons.

Now what that tells us is that you can't just look at sentencing and the sentencing structure in the state and make some determinations, and make some decisions. You can't deal with sentencing law in isolation. And that's what the Commission looked at. It came up with about 40 recommendations that are so spread across a whole host of areas, one area being sentencing.

What they found, for example, is in the area of one of the reasons that was contributing to short-term stays in our state prisons was the fact that the pretrial stay in local jails, the credit they get for staying in local jails, had increased or doubled from about four months to about eight months over the last decade or so. So one of the recommendations in the area of sentencing that they make, is that we have to look at improving the efficiency of our courts and our court structure and our court processing because that is definitely having an impact on the time that you as Legislators have determined the person should spend in state prison, but aren't.

CHAIRMAN MADDY: Does it make any economic sense or even from a penal point of view to send somebody to state prison for three months? I can think back when I was an air police officer in the '60s when I had somebody who was really bad, I could send him over to the Navy Brig and it only took about six hours for him to be in the Navy Brig to want to cooperate. It was worthwhile. To rehabilitate, that's right. He never ever wanted to go back to the Navy Brig and of course, the Inspector General came in some place in that era, just before 1960, and changed that, too, but is there any sense to that from a economic sense or penal point of view?

MR. HARDING: Well, the Commission in one of the Commission's conclusions was it questioned the public safety value of an individual coming into state prison for say a month or two or three or so in terms of its cost-effectiveness, its cost-benefit.

That was a conclusion on the part of the Commission, saying, it seems we might be able to handle that individual in some fashion that means something more than a bus ride from a local jail to the reception center and then put on a Greyhound bus with $200. And so they went into a whole series of recommendations really outside the sentencing area in part to kind of deal with or zero in on that population, saying that perhaps they ought to stay in the community in some fashion, either incarcerated or otherwise.

MR. EDWARD R. COHEN: I think you touched on it, but in terms of time, could you specifically, at this point, answer the question, "Is there a relationship between rates of incarceration and crime rates?"

MR. HARDING: Rates of incarceration and crime rates? The Commission, in looking at rates of incarceration and crime rates really said that there's no tangible research that demonstrates that there is a correlation there. They also said that would be a fruitful area for a lot of research, so someone can come up with perhaps some conclusions there. Because in California over the last few years, what we have experienced is a kind of a leveling off of the crime rate in certain instances with a rather high rate of increase in terms of the incarceration rate. So there may be a correlation there, but in terms of the research literature, there doesn't seem to be anything that indicates that. But the reality is in California there is a kind of a steadying off in terms of the crime rate.

The Blue Ribbon Commission in looking at all of this, essentially said, "We really haven't had the time over this 18-month period that we were in existence." We were looking at a whole host of things in terms of its impact on prisons and so forth, "to really get into this very complicated issue." They came to several conclusions. One was that they think that the general mix of indeterminate sentencing and determinate sentencing that we have in California is probably somewhere in the ballpark of being appropriate. They did say, however, that perhaps there might be consideration of looking at violent crimes in the context of adding to the list of indeterminate sentences. But they felt that that should be the subject of a sentencing law review commission to look at what the sentencing structure in California really ought to be.

The DSL, as you know, changed the goal of imprisonment from rehabilitation to punishment and that has been the practicing philosophy in California over the last decade and a half or so. What they suggest is that what we need to do is establish a sentencing law review commission. This is not the classic sentencing commission of the Minnesota model, it's more of just a law review commission to look at the sentencing law and look for purposes of clarification and simplification and make some determinations and perhaps conduct some research in terms of incarceration, crime rate, and those sorts of things. Look at the literature in terms of what's going on with other states and

particularly focusing in on clarifying and simplifying the existing structure. Perhaps revisiting the philosophy of what we're trying to achieve with our sentencing structure. Establishing some sort of on-going process for reviewing proposed new sentencing laws and enhancements to advise the Governor and the Legislature in terms of the effect of that. Look at the efficacy of establishing some guidelines or sentencing guidelines or a grid for the system. And look, at the notion of expanding what they called intermediate sanctions in the sentencing law. Those intermediate sanctions are visited a lot in the Blue Ribbon Commission's Report, kind of looking at things that we might do somewhere between probation and state imprisonment. Perhaps more of a community detention model.

That's it. Questions?

CHAIRMAN MADDY: Thank you. Any questions?

We've been joined on my right by Assemblyman, soon-to-be Senator Charles Calderon.

ASSEMBLYMAN CALDERON: Thank you very much.

CHAIRMAN MADDY: We have Mr. Don Novey, the State President of the California Correctional Peace Officers Association of Sacramento. One issue and one question is inmate behavior. You can have a seat if you want, Don. You don't have to stand.

Are the inmates sentenced under the ISL or DSL better behaved was the broad question we presented to Mr. Novey.

MR. DON NOVEY: Thank you, sir. I'm Don Novey, representing the California Correctional Peace Officer's Association, sometimes

called "the toughest beat" in the state. Or, sometimes called the most "beat on in the state." I noticed the one judge earlier alluded to the Byzantine Empire in reference to the implementation of this wonderful Nejedly law, SB 42. And I worked in one of these facilities that was built there in the Byzantine Empire -- Folsom Prison. One thing the judge is somewhat askew on and I think it's kind of interesting. I think Ned's probably more up on this. The judge's last accounting of the inmate population was about 80,000. It's now close to 90,000 if I'm not mistaken and we're increasing by leaps and bounds and things are not going to go backwards.

Presently we have 14 prisons with over 200 percent population. We have one facility with over 300 percent population. Just contacted our federal peace officers in the state of New York and they're in a quandary because they might have to go to court because they might have to have one facility that nears 200 percent and they're thinking of going on strike in the state of New York as a result of that, which I think is quite interesting.

Realizing in California that these laws were going to impact us way back when as a lay officer working the line when the Nejedly law came into effect, we thought things would be all right under the determinate sentencing law and that this fair justice would be placed upon the convicted felon. However, subsequent to that, and I didn't hear it earlier, unless it was brought up, we had the Terry Goggin's bill go into effect. I consider it the

infamous one-for-one law* and it was passed by this Legislature, I think, in 1982 and implemented in 1983. What happens under this -- this law is that the inmate will receive one day off their sentence for every day they work or they go to school or they learn some sort of other education within the system. However, most inmates, when they receive a disciplinary and they do lose their time, within a space of six months they get all that time back because they have appeals rights within the correction system. And a lot of people in society aren't cognizant of that.

So therefore, if we have an inmate that stabs an officer to death and we might be able to give him up to an additional year. But then they can appeal that and probably get most of their time back, which I think is quite interesting.

The old Indeterminate Sentencing Law which I worked under as an officer and the new Determinate Sentencing Law which I worked under as an officer and a supervisor in state government, has some interesting aspects. Under the old Indeterminate, I wouldn't want to use the word control, we were able to help the inmate help themselves more. They were forced to program -- and I don't mean by going out and breaking rocks or walking the straight and narrow line. That means that they were forced to get an education. Today 42 percent of all inmates in our system do not have a high school education and it's something that's really not addressed across the board.

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*See Article 2.5 (commencing with Section 2930) of Chapter 7, of Title 1, of Part 3, of the Penal Code.

I know Sonny Barger went from a fourth grade education to a Bachelors in Science degree and later became one of the most infamous methamphetamine drug lab experts in the nation. But education, we think, is a very serious thing and it's a necessary thing for the inmate population to become an integral part of society again.

In addition to that the inmates behind the walls, if they had an infraction, that would go into an official 115 report and go in the inmate's record. And when they did go up for a parole or consideration for parole, that was a serious factor. And it, in essence, kept a lid on our facilities.

Subsequent to the implementation of the Nejedly law, we had a rash of riots throughout the state of California and in about 1982-1983, and mind you, our population was stable for about five years, where our population didn't increase hardly at all. We only had 23,000 to 24,000 inmates. Today we have 90,000. But inmates were rioting up and down the facilities, from Soledad to Chino to Folsom with a de minimis amount of inmates in proportion to what we have today. In 1983 we started a massive building program. By the way, it was started under the Brown administration. A lot of people aren't even cognizant of that. And today we have essentially about 45,000, I guess, new residents subsequent to the 1983 building at Vacaville.

The interesting thing that ties in with this is that our violence level is somewhat the same. It hasn't dramatically increased. We've put 12,000 new officers on line and if anybody's been in the logistics of law enforcement, educating and training

and, Mr. Maddy, I didn't realize you're a former air police person, I guess they called them policemen back then -- but the interesting thing is that it takes a lot of time and effort and then to train all the new supervisory personnel. Somehow we've been able to do that. I don't know how, but we have. And we've been fairly successful. We haven't had a great number of riots and we've been able to hold the line.

I'd like to make a recommendation here today to this august body that we start seriously considering maintaining the Determinate Sentencing Law for the first time offender up and down the road. I guess we've had some enhancements subsequent to the enactment of the Nejedly law for the more violent offenders. I think we've, as of last month, 42 percent of all inmates in the system are violent offenders, so out of the 90,000 there's approximately 40-some thousand inmates that are -- or 40,000 inmates that are violent offenders. We'd like to see on the second commitment that they go to indeterminate sentencing. The judge has alluded to that earlier. He says, "Hey, we need to maintain our control as a judge in the system," which I fully understand. But I think that a convicted felon who goes "a second time around" has given up that supposed right.

What this would create is that the citizenry, I don't care if it's in Boyle Heights, Casa Blanca, and Riverside, Sacramento, San Francisco, or South Lake Tahoe with their recent drug problems, they would give the citizenry some sort of voice in the actual hearings for these inmates when they do go up for parole. We think that's something that hasn't been taken into effect.

Since the Nejedly law, there's only been 461 victims' groups formed in the state of California. They're all in existence today. They're an integral part of society. I'm a member of the Coalition of Victims' Equal Rights. Our president is Doris Tate, Sharon Tate's mom. And they will be expressing themselves at these hearings in the future. I think that's something that's been forgotten is the victim.

And thirdly, the actual operation of the correctional facility would be a more of a, I guess, stable arena as a result of implementing or reimplementing the Determinate Indeterminate Sentencing Law, putting it back on the books. We gave a great deal of thought to just going back to the Indeterminate. We think that would cause nothing but chaos within the capitol. It might even impact Mr. Calderon's election to the Senate and we didn't want to do that.

In all seriousness, in reference to that, we figured it'd take three or four years to get through this Legislature. And to be honest our facilities are netting 10,000 to 12,000 every year and we can't keep up. We are having some difficulty in recruiting officers on the line as all law enforcement in the state of California is right now because of the drugs that are so permeating our society now. I guess Sacramento County's a direct reflection of that. That they're now waiving anybody that hasn't had a drug history in their last three years as being eligible to become a county deputy sheriff. Isn't that a sad reflection of what's going on out there, but it's true. And then we're going to

have to hire between 5,000 and 10,000 new officers and get them on the line and get them trained and operate within these facilities.

Before I get off here, I'd like to bring up the area of drugs. The interesting thing is that we have these individuals, and we do have our CRC program. I think Ned's fully cognizant of that operation. We do have some good programs in Youth Authority as well. We don't have enough.

One thing I'd like to emphasize is that it's amazing that these individuals come in as drug offenders and do their one or two years and they still go out addicted to drugs. So that doesn't tell you anything that they're still using inside. If we can get them away from using drugs on the inside and I think we're going to have to become somewhat more restrictive into the introduction of drugs in the correctional facilities. Since the arrival of 1977, the Institutionalized Persons Act via Congress, inmates' rights have increased dramatically in the system. Inmates can now demand the FBI investigate officers on the line by the Institutionalized Persons Act, which is quite interesting. I think that we've gone full circle in reference to that.

We need to have more restrictions built into the inmate element in reference to their availability to drugs in the correctional facilities. And believe it or not, the drugs themselves are not a big safety factor inside the facility. It's alcohol. We have more staff assaults and more inmate assaults as a result of homemade brew within the correctional facilities. What drugs brings is power. Power amongst the gang elements

within the correctional facilities and that's their interaction. We would like to see maybe some enhancements under the Penal Code in reference to individuals smuggling drugs into correctional facilities. And that goes for free people as well as those that work the facility. We're very supportive of something in that line. And I'd also like to mention we're also supportive of inmate visitation. And that's a very narrow and fine line we have to deal with because we think that's one of the more positive elements in a correction system, is the inmates' interaction within their families.

That's about it.

CHAIRMAN MADDY: Thank you, Don. Any questions, members of the Committee? Appreciate you coming by.

MR. NOVEY: Thank you.

CHAIRMAN MADDY: Thank you. I have a question on rehabilitation for T. L. CLannon, M.D., former Staff Psychiatrist at the California Department of Corrections Medical Facility in Vacaville: Is rehabilitation more effective under the ISL or the DSL?

T. L. CLANNON, M.D.: Senator.

CHAIRMAN MADDY: I think each of the members of the Committee have Mr. Clannon's opinion article. Maybe some of them have had a chance to read it, sir.

DR. CLANNON: If you haven't, I'll be glad to give you a copy.

CHAIRMAN MADDY: They all have a copy. It's called

"Rehabilitation Was Working; Determinate Sentencing Results in a Greater Recidivism Rate and Leads to More Victims of Crimes." So, that was the title of an article which you wrote in March of 1982.

DR. CLANNON: Actually, I was Superintendent of the Medical Facility at Vacaville from 1972 to 1980 over this change from indeterminate. In fact, I remember arguing on one occasion with Senator Nejedly about that, as well as the liberals. It struck me even at that time that those strange bedfellows were likely to produce a monster of some sort and what I hear today makes me think maybe that's true.

But what I want to talk about is the fact that an indeterminate sentence has been in the past a very important aspect of rehabilitation and that when you're talking about the purposes of imprisonment, while punishment may be the top, rehabilitation should be in there as well. Because there's a cost of imprisonment. Not only in dollars which I hear you referring to. There's a cost in terms of those lives that are affected by imprisonment. There's always the danger that imprisonment is going to turn out a person who is more criminal than he was before. And there's also the victims. In my article I pointed out that every year from 1975 when the Adult Authority under Ray Procunier first introduced this determinate approach, that every year from then on there was an increase in the recidivism rate. That is, more parolees came back to prison. That trend has continued as far as I know to this date. And whereas in 1975 or before, that one out of about four parolees was returning to

prison, it's now two out of three according to what I'm told. I haven't seen the figures on this, which, by the way, is interesting in itself. But what I'm told is that the return rate right now is approaching 60 percent. That means, every one of those returns with a new crime means a victim of a crime in a community, at least one victim. Typically it's more than one victim. I didn't hear with Senate Bill 42 and I still don't hear much concern about the outcome of imprisonment. Where is the concern about the outcome.

When I looked for some research to support what I had to say to you today, I went to the library and found that the Department of Corrections stopped in 1985 reporting the outcome of imprisonment. From about the 1950's sometime until 1985, you know, I could give you statistics on percentage of people going back to prison. That stopped in 1985. I also remember that the Bureau of Criminal Statistics, which in 1977 or 1976 when this was passed, included in their statistical keeping whether a person being arrested had a prior commitment or not. They stopped that also. And the clear message, it seems to me, both to the criminal and to the professionals in rehabilitation in the prison system, the clear message is, don't worry about outcome. We're no longer concerned about outcome. I suggest to you that that's a bad point of view to take and that, however, you craft indeterminate sentence that you not, you know, not do it without some consideration to the outcome.

As I listen to people talk about this, it seems like there

are various models adopted and the model that seems to be most prevalent right now is the model that we're engaged in a war on crime, you know, and we're going to be tough and you've got to show that you're willing to pay the price. But I think you ought to look at the question to what extent is that price being paid in more victims of crime. It doesn't make a lot of sense to be a tough warrior against crime if the result of your efforts is that there's more crime, there are more victims of crime.

In order to convey the impact of the Determinate Sentence Law, I would like to compare the situation I encountered, or the prisoner encountered coming into the prison system. Prior to the Determinate Sentence Law, he went to a reception center. It was called then the Reception and Guidance Center. Very shortly after the DSL came in, the 'Guidance' was stricken out. It became a Reception Center. Justly so, because indeed the guidance did pretty much stop at that point. The diagnostic study that we had seen in San Francisco. I remember talking to a fellow -- actually at San Quentin -- whose family had approached me, but he was getting out of prison. In talking to him, no one had ever questioned or ever talked with him about why did he commit this robbery. He had a determinate sentence. There was no need for that. When it came close to release, why was a release plan not developed? There was really no need for a release plan because he was going to be released on a certain day that's fixed by the judge anyway.

When I talked to him a few months before he was to get out,

he was still thinking about, you know, what am I going to do? Am I going to go back to the gang I belonged to before? Am I going to try to find a different way to live? And so forth. All those issues would have been addressed under the indeterminate sentence. First of all, in the reception process. Secondly, in the times when he would go to Adult Authority hearings and, you know, the Adult Authority would question why did you do this? What is this..? And so forth.

Now, all of that had the effect of challenging the prisoner. It had the effect of challenging him to account for himself and to take responsibility to some extent for his actions. Admittedly, a lot of them didn't and a lot of them didn't rehabilitate themselves, but I suggest to you that from my observations, some of them did and, you know, some of this kind of statistical data that we're looking at now, which indicates that, as I say, that two out of three prisoners are returning to prison within two years of their release, whereas for many years that figure was maintained at much lower levels.

You know there's some explanation for that. I'm not going to be so absurd as to suggest that it all has to do with rehabilitation because there's a lot more going on outside in society that promotes return than that. But I think that from my observation that, as I say, that rehabilitation is part of it.

Another issue that I have some observations about and some experience with has to do with the issue of whether an indeterminate sentence makes any sense because experts can't

predict. I remember that when Governor Brown signed SB 42 he characterized the change by saying, "We used to think we could psych everybody out and now we know we can't psych everybody out so we're going to not try." Well, I couldn't disagree with him about when he says, "We can't psych everybody out," because, in fact, we can't. You can't decide on an individual case. But there is a lot of excellent research to demonstrate that experts, the criminologists, and the psychologists and my own psychiatrist can recognize risk levels.

And there are several studies. They tend to cluster around a factor of three, that is, that given a group of robbers that you can pick out some of them that of whom one out of ten will reoffend and another group out of which three out of ten will reoffend. You know the argument that we got, especially from the liberals during the SB 42 debate was that, well, even if you're able to do that, it doesn't make sense to keep the one in prison that has three chances out of ten because there are six chances out of ten he's not going to do it. It's just not fair. From my standpoint, I don't think we have to put up with those extra two criminals' careers. There should be limits certainly on the indeterminate sentence and I think the old limits were too long. That was part of the problem maybe about fairness that, the sentences were like one to life, six months to ten years, and they were too wide. They went far beyond the extent of our ability to predict future behavior. But I don't think that our ability to predict should be dismissed entirely.

The analogy may not be such a good one, but it occurred to me last night that as I say, we can predict at a factor of three and I don't think that a baseball manager would do very well if he couldn't perceive the difference between a 100 hitter and a 300 hitter. And when he had to pick out a pinch hitter, he said, "Well, we'll send that 100 hitter up. After all, even the other guy only hits three out of ten." I think the analogy is not entirely inappropriate that we've got knowledge. I think in many ways the deficiency is not in the lack of knowledge from the experts in these fields. The deficiency is in the law that hasn't had the creativity to figure out how to use the level of predictability that we can produce. And that there should be ways of doing that. Even ones that are constitutional one would have to find.

Oh. Those are the two major points that I wanted to make. There is one other aspect of this that frequently came up in these arguments and that had to do with whether mandating treatment for people as you do in an indeterminate sentence. By the way, I would say that whatever you do about indeterminancy, it should happen at the beginning. Because of its continuing effect on a significant number of prisoners. If they know going in that when they come out depends to some extent on what they do, there is a continual encouragement of them. There were some people who said, "well you can't do psychotherapy, you can't do counseling with people if they're forced into it." That's just flat not true.

And it's not only not true in the prison situation, it's not true in a lot of others.

There's some excellent research I recently saw from the Employee Assistance Program, alcoholism studies, to show that those people who are pushed by threat of loss of their job into counseling for their alcoholism actually do better than the ones that if you wait until they've deteriorated to a point where in many cases they're not able to rehabilitate themselves. But there is a lot of resistance to rehabilitation that is overcome when you push people a little bit. And once you get them started, they will carry on. We saw that often in our rehabilitation programs, so that I think that argument doesn't hold.

As I've listened to you today, I've observed that you tend to think about indeterminancy as that's a good way to punish people more when they're tough, when they're worse. I want you to think about that's a good way to get those people who have the capacity for rehabilitation to be rehabilitated. In many ways, that seems to me to be more the result of the indeterminate sentence than taking care of the worst offender.

It was hard for me to understand how in the DSL law when it came in, the one group of offenses that was kept ISL was first degree and second degree homicide, which when you look at the people involved, those are the people that don't need rehabilitation for the most part. They're people that have killed. They need punishment and punishment is the outstanding feature of their imprisonment.

But I remember at that time I had a very dangerous person in my care who had killed somebody,-- in fact, he killed a correctional officer. He ended up with being tried and someone defended him on, I forget what they used to call it, but anyway, it resulted in a reduction to manslaughter, to voluntary manslaughter. Diminished capacity, yeah. Right. It was the same thing as Dan White's. Now this was a man with a history of knife assaults on people, and I think, as a juvenile he'd had a homicide. Now there's a man that to me, the fact that it was manslaughter because it was based in part on mental problems, seemed to me to mean that he ought to be indeterminate. The first degree murderer that comes in because he shot his partner, his business partner or whatever other motive, seems to me to be someone who should be punished and whose sentence should be tailored to punishment.

So as I see it, the ISL is particularly valuable when it comes to promoting rehabilitation, promoting people, keeping people from the criminalization that otherwise tends to occur in prisons. In the way you write it, it shouldn't be confined to the worst criminals. I think the judge ought to have the discretion. I think, though, what I would favor -- what little I know about the law -- would be one in which an ISL was available as an alternative sentence in every offense to the judge. And that in general, their philosophy should be that if this is a person where punishment is not the primary or not the most outstanding feature, but rather protection of the public is the major feature or a

potential for rehabilitation, either one of those is the primary, then that's the case that should have the ISL.

CHAIRMAN MADDY: In general, do you have any response or comments on Senator Nejedly's remarks about one of the objects of SB 42 was the fairness question? That those who had the opportunity for rehabilitation, those who had an opportunity to early release, was much of that based on appearance, color, et cetera in your experiences?

DR. CLANNON: Actually, Senator Nejedly today said that when they looked at prejudice, they noted that it operated at the level of arrest, arraignment, all these, and my recollection of this was that some studies that we did was that the closer you got to the prison system and the Adult Authority, the less disparity of sentencing was evident from the things like race and other considerations. Of course, that was one of the reasons that they passed the Indeterminate Sentence back in 1917.

I don't know what actually happened. I did see one report of disparate sentencing from the Board of Prison Terms around 1982 and I remember noting that the disparity between counties, between Oakland and San Francisco and Madera, was far more than the disparity that I had ever observed under the Adult Authority term sentence fixing. Now there was that potential and, you know, I could probably recall individual cases where I would feel that there was prejudice operating. And as I say, I think the limits were so great that it exceeded reasonable fairness.

CHAIRMAN MADDY: Thank you very much, sir. Any questions by the members of the Committee. We appreciate your being here. Thank you.

DR. CLANNON: Thank you for the opportunity.

CHAIRMAN MADDY: We have inmate preparation for release: ISL versus DSL and then Public Safety. David Brown, Commissioner of the Board of Prison Terms in Sacramento. Mr. Brown.

MR. DAVID BROWN: And Jim Dowling.

CHAIRMAN MADDY: Oh, and Jim Dowling, Chief Deputy Commissioner, Board of Prison Terms, Sacramento. Come on up, Jim. You can be seated or stand, either one. If you're going to be a dual, you might as well be seated. Right.

MR. DAVID BROWN: Without taking a position on whether or not a Determinate or Indeterminate Sentence Law is the best system, it is my opinion that while the Determinate Sentence Law may establish uniformity and eliminate disparity in sentencing, it does not provide adequate protection to the public from dangerous, violent criminals.

When the Legislature enacted the Determinate Sentence Law in 1976, most crimes, with the exception of murder and kidnapping, primarily, were changed to determinate prison terms. There was also a fundamental change in the concept of parole. Parole under the old Indeterminate Sentence Law in effect prior to 1977 was considered as constructive custody. Since parole was merely the serving of a prison term outside the prison walls, the Parole Board had the authority to revoke parole and return a parolee to prison potentially for the remainder of a prisoner's maximum term,

which usually was life.

The Determinate Sentence Law changed the concept of parole from the traditional model of constructive custody to a system that provided for a definite term of confinement to be served in prison and a separate and determinate period of parole. Public safety is not considered under this system. A prisoner is released from prison automatically whether or not he is prepared for release and whether or not the prisoner is dangerous. After release on parole, the parolee is also automatically discharged from parole supervision after a definite period of three or four years, regardless of whether or not the parolee is dangerous.

The intent of the Determinate Sentence Law was to eliminate disparity and establish uniformity. The law, therefore, did not address the real problem of violent criminals.

As a result of the failure of the Determinate Sentence Law to provide the public protection from the release of violent criminals, I can recall the prediction of critics at the time that there would be many cases of public outrage over the automatic releases of clearly violent criminals.

In sharp contrast to the Determinate Sentence Law, the existing indeterminate sentence law, which applies primarily, again, to murderers and kidnappers, contains provisions which address the issues of public safety and disparity in sentencing.

Unlike the Determinate Sentence Law, under the indeterminate sentence law, efforts are made to prepare the prisoner for release. For example, during the third year of incarceration and every third year thereafter, the Parole Board meets with the

prisoner for the purpose of making recommendations to the prisoner in preparation for release.

In making decisions to grant parole under the existing system, the Parole Board considers such factors as the nature of the crime or crimes committed by the prisoner, the prisoner's prior social and criminal history, psychiatric factors, in-prison behavior, the prisoner's efforts to upgrade himself educationally, whether or not the prisoner understands the underlying causes of his crime and has taken measures to prevent any reoccurrence, whether or not the prisoner expresses remorse for his criminal conduct, the prisoner's parole plans, and finally, the risk to the public if the prisoner is released.

The existing system also has provisions which provide for uniformity and elimination of disparity in setting the terms of prisoners by the Parole Board by requiring the Board to rely on the rules of the Judicial Council and the Sentencing Guidelines of the Determinate Sentencing Law when granting parole dates and setting the terms of life prisoners. For example, the Parole Board must consider factors in mitigation or aggravation of the crime, prior prison terms, multiple offenses, and a matrix of suggested ranges of terms.

While the Board of Prison Terms reviews all determinate sentences for disparity, it is not mandated by law to review indeterminate sentences for disparity.

The parole consideration hearing process under the existing system includes many statutory provisions which are intended to

assure that the safety of the public is given adequate consideration. For example, the Parole Board is required to state in its parole decisions whether or not the prisoner would pose a threat to public safety if released. Victims and next of kin are permitted to attend parole hearings and express their views concerning the prisoner's release on parole. Any member of the public may submit written statements in support or in opposition to the granting of parole.

The District Attorney of the county from which the prisoner was committed has the right to attend the parole hearing and represent the interest of the people of the state at the hearing. The Governor has authority to either request review of any decision by the full Parole Board or to reverse or modify a decision made by the Parole Board.

The authority of the Parole Board to rescind a parole date previously granted to an indeterminately sentenced prisoner provides safeguards to the public, which are not provided by the Determinate Sentence Law. The Parole Board, pursuant to its administrative regulations, may rescind parole after it is granted but before the prisoner's release based on misconduct, psychiatric deterioration, new information, fundamental error in the granting of the parole date, or any other conduct which indicates the prisoner is not ready for parole and would pose a danger to the public.

A recent research study of indeterminately sentenced life prisoners released on parole by the Parole Board in the past six

years indicates that these life prisoners have been substantially more successful on parole after release than determinately sentenced prisoners. The study revealed that of the life prisoners released, all of whom were murderers, only 20 percent have been returned to prison during the past six years and none have been returned for murder. This compares with a national return rate for parolees of approximately 63 percent. The study suggests that those life prisoners most likely to fail on parole are those with a prior history of heroin addiction, a rapist, and prisoners with long histories of assaultive behavior, particularly when such behavior has been directed against authority figures.

The policies and programs of the Board of Prison Terms and the Department of Corrections are apparently having a positive impact in reducing the recidivism rate of murderers and violent crime committed by murderers after their release from prison.

Again, it is my opinion, that the interest of public safety would best be served if certain violent crimes, particularly those listed in Penal Code §1192.7 were changed to indeterminate sentences. Thank you.

CHAIRMAN MADDY: Mr. Brown, do you have any opinion as to which -- which of the violent crimes you...

MR. BROWN: I had looked at the crimes as identified in Penal Code Section 1192.7 which are serious felonies and those are basically murder, mayhem, rape, sex offenses against children under the age of 14, offenses where the person used a firearm or inflicted bodily injury of the victim.

CHAIRMAN MADDY: Mr. Dowling?

MR. DOWLING: Thank you. I worked in the parole system for about 12 years before coming to the Board and I was on the street as a working agent during the implementation of Determinate Sentencing Law. I've seen a comparison of the two and also as I worked with the Board of Prison Terms in dealing with parole violators.

Some of the things that come to mind that have been mentioned already by the previous people who have testified as to indeterminate, the key issue with suitability for release and suitability deals with whether or not that person is going to be a risk to the public. That was a very important factor. As Mr. Brown's already testified to, that's what's used in our lifer process today. I think the statistics bear out that this is a very important factor that does lead to public safety.

Determinate sentencing has impacted the correctional system. It's impacted staff. I worked with Dr. Clannon in the Bay Area so I know what he's talking about. We've interacted in some of the cases. We've seen that what has happened when the rehabilitation model went out, that staff in prison are now spending a lot of time on process, working with parole violators. They're being returned for three, four months. I think our average is seven, but you get a lot of drug violators are in and out. You're taking prison staff time dealing with getting them in and out of reception centers and back on the street. Parole agents don't

know whether the parole violator is being released today or tomorrow because of the good time credit calculations and all that maze of administration that's come about because of determinate sentencing. The key issue that we lose in the process is the whole matter of suitability. I think that if we look at the stats on parole violators from 1978 up until 1988, and I ran the stats just before I came here, we had a 28 percent parole violator rate in 1978 and in 1988 it was up to 87 percent. When you look at that, that tells you that we are into a recycling model and we're not doing a whole lot about behavior. In the old system, it seemed like we held people more accountable for their behavior and rather than looking for a determinate set of time, you're going to go in for three years and you're actually only going to be in a year and a half, if you get the work credit. So therefore, just do your work and you'll get out and as Dr. Clannon suggested, if we are asking people the questions and dealing with why you are a rapist, why you are a robber, let's get some kind of a perception on attitude, and what's really going on. Then there are assessments. There is predictability, even from the nonprofessional.

I was a street cop for about nine years and I'll tell you what, I relied a lot on gut-level perceptions and I could predict a lot of times whether or not I was going to get hurt or how somebody was going to react. As a parole agent, I found it very, very helpful to be able to decide, is this guy going to re-offend? And I found that in most of the time, and not all of the time, but

most of the time we had a handle on who was going to go back out there and cause grief and commit crime. One of the big problems with determinate sentencing is that every time that we let that guy out and bring him back, and if the law has changed as a result of this committee and the legislative reform, there are going to be a lot of victims out there in the meantime. I think that we saw less and less victims under indeterminate than we see under determinate.

I'll just give you one example. We had a case that I was a supervisor in a unit in Walnut Creek and we had a prison gang member that was a fourth termer. We knew that he was going to reoffend as soon as he got out. In fact, we had coordinated all kinds of law enforcement liaison to try to do some surveillance on this guy to see what he was up to. Within two weeks he had committed over seven felonies involving firearms and the last time I went in to testify at a parole revocation hearing, I had a picture of him -- surveillance photo out of a bank -- with him holding a shotgun with a ski cap and I'm reminded of that. That's just one example of many that came about and we had no control. As a parole violator, he went back for a maximum of a year. Unless there was sufficient evidence to get a new offense, he would do that year and be back out. There were a number of cases like this where we had lost control in the sense that we knew they were going to go away for a short period of time and be back. Under indeterminate, the term was to finish term because the parole was a real extension. They would go back to finish their

term and they would be there for a significant period of time and again be re-evaluated.

When I attended the Blue Ribbon Commission and as Mr. Brown's already alluded to, the Blue Ribbon Commission, I got in on the tail-end of it. I was a kind of a fill-in. I made a comment and as Mr. Brown and I had talked about what would be serious offenses. It looked like people were looking at 667.5 of the Penal Code. Those are the real heavies, and it wasn't covering it. So we were looking at Penal Code 1192.7 that's been mentioned here and I put on the record at the Blue Ribbon Commission that Penal Code 1192.7 would be a good list to look at. That came out of Prop 8. These are the plea bargaining offenses -- the offenses that are not allowed to be plea bargained by statute. If you look at the list, and I just made a copy of them, it's got a number of things that I think the Committee ought to look at regarding whether or not you want a list that's concise, deals with issues, and the one thing I liked about it, it included such things as, residential burglaries that we seem to forget. That really has an impact on our society when we're talking about drug offenders tied in with it. That's all I have to say.

CHAIRMAN MADDY: Question? Senator Presley?

SENATOR ROBERT PRESLEY: Your returnee figures again. What year were they 20 something percent?

MR. DOWLING: Twenty-eight percent in 1978 and 87 percent in 1988.

SENATOR PRESLEY: What about the influence of the drugs, though, during that ten-year period? Hasn't that multiplied many times over?

MR. DOWLING: Oh, certainly, certainly. We're having the same people go back...

SENATOR PRESLEY: Wouldn't a lot of those figures represent people who have been violated for drugs?

MR. DOWLING: Yes, correct. It really signifies to me, Senator, the recycling effect of the short-term coming in and out and in and out.

SENATOR PRESLEY: But my point is that the difference, I think, is the drug thing.

MR. DOWLING: Oh, certainly. Certainly a significant impact on it. Correct.

CHAIRMAN MADDY: Anything further?

MR. COHEN: One question. On the rehabilitation. If we were to start putting money into rehabilitation with determinate sentencing, couldn't we achieve some of the results that you're now achieving with the indeterminate sentence, or is it simply the fact that they don't know when they're going to get out? Is it the hammer that is necessary to get the rehabilitation?

MR. DOWLING: I can respond. I think that the hammer is really effective. The whole issue of uniformity and fairness has seemed to overshadow what was, I think, effective previously and that is that, say an inmate can go out and he says, "All I've got to do is go mow the lawns and I'm going to get out early and I

know my date." And under the other system you've got an inmate who says, "I'm going to be evaluated. I'm going to be asked some pretty poignant and direct questions regarding whether or not I've got it together and I'm a risk and I'm suitable -- still at risk or suitable for parole, and not knowing whether I'm going to get out in 15 years or out in 10." But the old indeterminate sentencing had a max and as Dr. Clannon said, maybe they were too long. But if you compress them and say that "you are going to have to demonstrate through, however we go about our rehabilitation process in the institution that you're suitable for parole," I think that's an excellent handle and holds people accountable for their behavior and for their adjustment.

SENATOR PRESLEY: Mr. Chairman, let me ask a, I guess, historical question. Maybe Senator Nejedly would be part of the answer. As I understood it, way back in the Reagan administration, before SB 42, when the prisons had begun to fill up, the word would just go out to parole more people out and then that kept any need for new prisons during his administration. And then when SB 42 passed, as I understood it, the ranges that were selected were averages of what they found that people had been serving for various crimes under the Determinate Sentence Law. Is that right, sir?

SENATOR NEJEDLY: If I could comment on this in a broader sense. We made a review of all of the time served in the various offenses to the extent that we could and set that as the average for the sentences that were originally set under the Senate form

of SB 42, the original form of the bill. That was a purest approach. It didn't last very long obviously, because it was influenced by these other considerations we mentioned. But that was the time that was actually being served over the period of time this alleged hammer was in effect. What was occurring was no hammer at all. As a matter of fact, when the Governor and the courts were looking at prison populations, they told the Adult Authority on the Women's Board of Prisons...

SENATOR PRESLEY: It was Pardons, I believe. Pardons and Parole.

SENATOR NEJEDLY: Okay. It's an old joke about that with Senator Way down at Tehachapi. But in any case, they were released automatically. The ones that were released were the good guys. The ones that could come up and show that they had been rehabilitated. The ones that could make this appearance of reform and this allegation about remorse as a commission. If you could fabricate remorse, you got a date. If you couldn't because you couldn't communicate or you didn't know the system, you didn't get a date. That's the whole system. It's deja vu again here today to hear these same arguments again, that somehow or another you can bring this person into prison, have a long conversation with him, get him to reconsider his ways, rehabilitate him and only release him when he's rehabilitated on some kind of a medical model.

In the third hearing on this we had a number of psychiatrists and a number of psychologists at the hearing and the allegation

that you could take ten burglars and put them at a table and tell, at a given time, which of those three or five was going to commit a burglary again is just hogwash and I hope that it doesn't influence this committee. There is simply no way that any group of people these witnesses or any other, can take ten burglars and tell you in a final form how many of them are going to commit a burglary again.

Well, what we did, to answer Senator Presley's question, we did go through the whole history of time-served and try to incorporate those into the legislation to make the whole system so that the time actually served...

CHAIRMAN MADDY: Okay, but those were averages.

SENATOR PRESLEY: Then after that was done, though, as I recall...

CHAIRMAN MADDY: Well, then we took them and...

SENATOR PRESLEY: That's when it became sort of shockingly apparent to a lot of people that the time being served was far less than most people thought was being served.

SENATOR NEJEDLY: That's correct.

SENATOR PRESLEY: That's when I introduced SB 709. I think you were the Criminal Justice Chairman over there. We began to go over these things. That's when we took 43 of the major felonies and sex crimes and increased across the board the sentences. Then later came the enhancements and the mandatories and all of that.

SENATOR NEJEDLY: The problem with that approach was you, at the same time, and I don't say this critically, you didn't build

the prisons to accommodate them.

CHAIRMAN MADDY: Well, there was a rash then for about ten or twelve years of rob a home, go to prison...

SENATOR PRESLEY: This would have been in 1978.

CHAIRMAN MADDY: You name it.

SENATOR PRESLEY: We should have started building prisons right then.

CHAIRMAN MADDY: Right.

SENATOR PRESLEY: But we here know why we put -- just as Jerry Brown -- he put a hundred million dollars in the budget every year to build additional prison capacity. The Senate would pass it and we'd get over to the Assembly Ways and Means Committee and they just couldn't bring themselves to do it. That went on for three or four years and all the time the numbers are rising and then we get along about 1980 and suddenly the Assembly realizes that golly, you know, if you're going to increase these sentences, maybe you do have to build some prisons.

SENATOR NEJEDLY: Right.

SENATOR PRESLEY: Problem was Prop 13 had passed and the state had given all the money back to local governments and we didn't have any money and that's when we had to start doing bonds. So, when we finally did get around to building prisons, then it had to all be by debt, unfortunately.

SENATOR NEJEDLY: Can I just make one more comment?

CHAIRMAN MADDY: Certainly.

SENATOR NEJEDLY: I understand the problem of these witnesses and I sympathize with it and I respect them for the job they're doing in a very almost impossible situation in criminal justice in California or anywhere else in the world today. If there is some suggestion that rehabilitation is still a motivation, and it should be, and that's why the Quakers are as consistent and as enduring as they are because that's their purpose as well, you have an equal opportunity to present that opportunity under a determinate sentence law as an indeterminate law. If you want to provide the counseling, the psychiatric treatment, the professional treatment of people, you can do it under the system today. The difference really comes down to it is that everybody is treated fairly and the same and you're not given some special consideration if you've played the game along with the prison authorities and you get a release date earlier than somebody else. That's what we tried to avoid.

CHAIRMAN MADDY: Thank you. Gentlemen, thank you very much for being here.

We have a good friend of mine, Justice James Ardaiz, the Associate Justice of the 5th District Court of Appeal from Fresno.

Last portion of our hearing: Is public safety better provided by ISL, DSL or a hybrid system? Are certain crimes or criminals better treated under one of the systems or a hybrid? Is a hybrid possible that combines the best features of the two, thereby meeting the public goal of freedom from victimization.

Justice Ardaiz, good to have you with us.

JUSTICE JAMES ARDAIZ: Thank you. Well, you have asked some complicated questions and I've listened to everything that everybody's said and let me explain, like Judge Perren, I've taught sentencing to California judges. I was a former presiding criminal judge in Fresno and sentenced as many as 4,000 people to prison a year, which seems like a staggering number of people, but it's reflective of the problems that virtually every presiding criminal judge has.

Let me explain that while the statement is true that a substantial percentage of reversals that occur are because of sentencing error, that is largely dependent upon the infrequency with which the average Superior Court judge sentences. It's not really reflective of what happens in your master criminal calendars. Those judges do this all the time and very seldom do they run into this kind of difficulty. But the average judge handling one of these every two weeks is just simply not prepared to face this.

I'm going to try and address a series of questions that I noted, for example, would we be better off by limiting the use of DSL to the less serious crimes and using ISL for the more serious crimes? My answer to that is, I think, yes. I think probably the best commentary upon the current DSL system has to be the recidivism rate and whether you think that it's reflective of rehabilitation or whether we should have punishment as primary goals, I don't think there's any question that our recidivism rate is climbing dramatically under our current sentencing structure.

Aside from that, I think you have to look at what the functions are that punishment serves. Punishment basically serves four historic goals: rehabilitation, deterrence, retribution, and isolation. Dependent upon the crime, those goals, in varying degrees, take on increased importance. With a young offender, a new offender, a nonviolent crime, rehabilitation plays a primary goal. Deterrence plays a principal goal. Retribution doesn't. Isolation doesn't.

Let me explain the terms. When I say deterrence, I'm talking about deterring the individual, theoretically, from committing a crime. The deterrent effect that literally occurs while they are incarcerated for a crime and the deterrent effect that occurs on the community at large when they see that crimes have a consequence, therefore logically deterring them from committing a crime. Retribution, very simply, is a societal reaction to the commission of a crime. It's just what we think the punishment should be. Isolation is quite evidently removing them from society for the longest possible period to protect the rest of us. It's a public safety criterion.

In that respect, determinate sentencing does not face public safety as a real factor. Determinate sentencing attempts to provide specified terms for purposes of consistency, for purposes of uniformity, for purposes of retribution, for purposes of deterrence. It does not serve the function of rehabilitation and it does not serve the function, logically, of isolation. There's nothing wrong with consistency and there's nothing wrong with

uniformity and there is certainly nothing wrong with the fact that determinate sentencing has been largely responsible for providing some consistency in the results that we've had with respect to all different racial, ethnic groups, crimes, and everything else. But public safety is a goal that must be recognized as one of the paramount concerns of the criminal justice and the sentencing system.

So when we deal with people who commit serious crimes, and I'm going to digress for a moment to comment on what I've heard referred to as the "crime of the month." Legislators reacting by increasing punishment. What Legislators are reacting to, I think, and certainly you're in a better position to tell me what you're thinking than I am, is the fact that the public is outraged that offenders who commit extremely serious crimes and who still constitute a danger to the public, are being released into the public before they are rehabilitated and while they still constitute a danger.

I think it is unrealistic not to consider that as something that must be addressed. I do agree with the testimony that has been given that we should consider more serious offenders for an indeterminate term. I do not agree that we should go back to the ISL system in its entirety. I think there's nothing wrong with the DSL system in the lower range of felonies. But I think Penal Code 1192.7 is a good place to start. I don't necessarily agree that all those crimes should be included, but the only way that we can effectively address the concern of whether or not a person

still constitutes a threat to public safety is by an indeterminate term. We cannot address that by a determinate term. I do not agree that we should do that in terms of providing an enhancement. I certainly, and it may sound a little incongruous coming from a judge, but I certainly do not agree that judges should have the discretion to choose between an ISL and a DSL system. If you do that, you will have some counties in the state that will do nothing but impose ISL and you will have some counties in this state that will do nothing but impose DSLs. You will have total inconsistency in the system. So I think it's perfectly appropriate for a legislative choice to be made as to which crimes are indeterminate.

At the lower end, I don't disagree with the idea of providing determinate terms to address the presumptive parole dates so that if you are dealing, for example, with three, six, and ten as the terms, whether it's three to life, six to life, and ten to life, judges do provide some presumptive parole date at the lower end. But I do feel that it is extremely important that you as legislators address the public safety concern in terms of allowing the Community Release Board, the Adult Authority, whatever it may be, to consider whether or not this person is ready to be released in the community. There is nothing wrong with presumptive dates at the lower end that they respond to.

Certainly there is no justification for taking an individual who represents a continued danger to the public because they have committed the most God-awful and heinous crime and obviously have

a character defect. You do not have to be a psychologist or psychiatrist to think that somebody that pours acid on a little girl's face doesn't have a character defect. They do. And somebody that does that, that character defect is not something that's a momentary thing. I mean this person represents a danger to society and society should not have to respond to them as much as they should respond to whether or not they are ready to be released into the community and abide by acceptable community standards.

So in terms of the question that is raised: Would we be better off having much wider ranges for DSL, having the judges set the term, giving the Board of Prison Terms the authority to parole persons before the end of that term? I think judges are perfectly capable, in terms of reflecting community standards, to choose a term. And that should be a presumptive term. I think there is a great deal to be said by having somebody serve the minimum term that a judge sets that is reflective of community standards. That is the person who is on the front line, man or woman, deciding that this crime merits at least this amount of punishment and I don't think it's appropriate that that be interfered with. That's what we have judges for and that kind of discretion.

With respect to the last question: Would we be better off leaving the relationship between DSL and ISL as is and focusing on whether the courts should be granted more authority on whether to sentence persons to prison? My answer to that is, perhaps. The current ISL system that we have that allows, and we do have that,

certainly, Senator Maddy was responsible for one bill that provides an indeterminate sentence reflective of an extremely aggravated type of crime, which is aggravated mayhem, but we have it for murder, we have it for other crimes like that and all we are responding to is our concern about the degree of danger. I think that degree of danger exists in many other crimes and when we address it simply by lengthening the term, we're not addressing whether that person's going to be a danger when we get out. We are being retributive. There's nothing wrong with that, but it doesn't help the next, I don't mean to be emotional about it, but it doesn't help the next child that's on the street that's attacked by somebody who is a pedophile and a dangerous child molester. I think that that's a responsibility that should be addressed within the system and a person who is confined within the system.

I've spoken very rapidly and covered a lot of things, but I know you're pressed for time.

CHAIRMAN MADDY: Appreciate it. It's suggested I might mention to members of the Committee that Justice Ardaiz, when on the Superior Court, brought the circumstances to me and brought about the aggravated mayhem case. You might, Mr. Justice, give us an idea of what you were faced with in that case. This was not the Singleton case in Modesto or the case -- I can't remember the...

JUSTICE ARDAIZ: Rothenberg.

CHAIRMAN MADDY: The Rothenberg case in which the man set his child on fire, but this was a similar type of incident.

JUSTICE ARDAIZ: Well, this man held a woman's face over a gas burner and burned her face off, for which he received a sentence of approximately four years, which was the maximum that could be imposed under the law as it then existed, and he had a prior crime against women in which he had disfigured a woman's face and partially blinded her. I remember at the time that I sentenced him saying, "It is quite evident to me that if and when you are released, and I am quite confident that you will, assuming you live long enough to reach your parole date, that you'll do this again." I still remember him vividly looking at me and saying, "You're right," and recognizing that there was nothing that could be done to deal with that.

CHAIRMAN MADDY: He said that in court?

JUSTICE ARDAIZ: He said that in court. I'm no different than anybody else. I mean in terms of being trained to not respond by punching somebody in the nose, I am just as outraged by the thought that I could do nothing to address this and this type of an individual. There are those types of people creeping around. It happened in Riverside with the little girl who had acid poured on her face. It happened in the Parnell case. It happened here and it's happened numerous times and I know all of you understand that and you're responsive to it. I'm not suggesting that you're not. I'm simply saying that that must be addressed by making sure that those people are not released just

because they have managed to live long enough or exist long enough to accomplish a specified term that we've set based upon some general range that does not take into consideration the circumstances.

In terms of low-end crimes, what I refer to as low-end crimes, the nonviolent crimes, the property crimes, largely reflective of narcotics, which I know you don't want to get into, but a few people have taken at least the moment to say it. Let me say this to you. If you want to impact the large percentage of crime in our society, it has to be done with respect to narcotics. I'm not going to suggest to you that I have an answer there, but I will tell you that we must impact the narcotic user and we must impact them in such a way that we insure that they are removed, whether its through a rehabilitative system or an incarceration system for a period of time and try to effectively rehabilitate them in order to frankly address the vicious problem that we have in terms of property crimes, the insurance problems that that creates for us, and the loss problems that creates for us. I know that's not the issue before you, but I suggest and my testimony here, if it stands for anything, will be that I think that we should expand our ISLs and retain the system at the lower end.

Part of that, I hate to use the term, I know you don't want to hear it. I know district attorneys don't like to use it, but I know that everybody does it, and that is that we need to be able to face the fact that sentences and crimes are very often negotiated and if we just made a life term for everybody or an

indeterminate term for anybody, we have no incentive whatsoever to address those problems and I don't suggest that that's of paramount concern to me but it is a fact of life. Besides that, I do think that there's a line where Senator Nejedly pointed out, at the lower end of crimes, whether they're property crimes, it's a punishment for a crime and we -- we just simply can't address everybody's problems, but I'm not sure that in the great scheme of things they represent the same kind of threat to public safety that the child molesters do and the rapists and the rest of those people.

CHAIRMAN MADDY: Any questions? Thank you, Mr. Justice, thank you. Thank your daughter, Jennifer, for being with us today also.

JUSTICE ARDAIZ: Thank you.

CHAIRMAN MADDY: Mr. Mark Arnold, Chief Assistant Public Defender, Yolo County of the California Public Defenders Association.

MR. MARK ARNOLD: Good morning. I was given short notice that I would be testifying today. I didn't really prepare any background on any of the questions that you may have. Some of those questions obviously don't deal with the defense end of the issue. But rather than make any statements or waste any of your time, perhaps my time would be best spent by just answering any question that you might have.

CHAIRMAN MADDY: Members of the Committee, and Mr. Cohen can ask you questions.

MR. COHEN: Well, the question, I think that Kimberly Lewis raised to you, and we appreciate that you came in at the last minute due to the fact that somebody else from your association had originally been scheduled to testify.

MR. ARNOLD: Right. I want to make clear that I'm not here for the Public Defenders Association. I'm just the Chief Assistant Public Defender for Yolo County.

MR. COHEN: In terms of the defense point of view and in terms of the questions that have been raised in terms of public safety, do you thinjk that some of the crimes listed in Penal Code §1192.7 would be better off under an ISL system than a DSL system?

MR. ARNOLD: I think so. Whether the DSL system has met its objectives and my opinion is that again, just speaking as a defense attorney who's been in this business since 1977. I'm in court everyday. I do sentencings. I did seven or eight felony sentencings yesterday. I do approximately 20 a week, 50 to 52 weeks a year, so I really am where the rubber meets the road and I understand the sentencing complexities, and I agree with Senator Lockyer's assessment earlier that we do need to revise the system because every single legislative session, we come out with a new bill and it's almost impossible to keep up with the system. There's a tremendous amount of pressure placed upon the Legislature to increase enhancements every year as a result of certain heinous offenses that occur without anybody's control throughout the state yearly.

SENATOR LOCKYER: We have now found 67. There may be more, but with 67 enhancements sort of scattered through the various codes -- Welfare and Institution and Health and Penal -- we started with, in the Nejedly bill, just a tiny little bundle of half a dozen or something potential enhancements.

CHAIRMAN MADDY: Sixty-seven bills this year?

MR. ARNOLD: Sixty-seven enhancements.

SENATOR LOCKYER: Oh, I see.

MR. ARNOLD: New bills, I mean.

CHAIRMAN MADDY: Continue.

MR. ARNOLD: In any event, I think the theory and the idea behind the Determinate Sentencing Law was a great idea. It made an effort to achieve uniformity in sentencing. But even within the parameters of the Determinate Sentencing Law, there's a lot of unfairness or un-uniform sentencings imposed from various jurisdictions.

I practiced in Ventura County for ten years and then moved up to Yolo County, your neighbor, and I've also worked in Los Angeles County and have some experience in Sacramento County. So I know the distinction in sentencings that occurs just crossing some imaginary political boundary and the problem is that if you get a case that has received any sort of high publicity, for example, a mayor who commits an offense will likely receive a higher sentence than a Pepsi Cola truck driver who commits the same offense. I think that even given the determinate sentencing parameters, that the current system is subject to abuse in that regard because of

prosecutorial concerns. I mean let's face it. District Attorneys are elected officials and the way the wind is blowing currently throughout the state, we're faced with tougher and tougher sentences and there's a lot of pressure, as Judge Steve Perren stated earlier, for courts to impose high sentences. This is a reality that we have to deal with.

I think, assuming you had a fair Parole Board and the criteria is uniform, the release date would be better in the hands of those who are able to evaluate an individual compared to 83,000 other inmates statewide than a particular judge sitting with a particular case faced with a lot of publicity and a lot of pressure placed on the District Attorney. Whereas, without regard to the psychiatric evaluation of the individual whether he's 52 years old without any prior record or whether he's just a complete recidivist at the age of 30 and really ought to be locked up for the rest of his life.

Frankly, as a defense attorney, I've stood next to individuals that for one reason or another, I won't get into details, really ought to be looked at very closely before they're ever released. I know that standing next to these individuals they're going to be released in eleven years, that they're likely to reoffend immediately upon release.

But the other side of that same coin is that last Tuesday I had an individual go to prison for two years for stealing salami and cheese. One year for the salami and one year for the cheese. I mean that's a joke, but really a two-year sentence for that type

of offense and I just don't see that my money as a taxpayer is well spent at $20,000 a year to incarcerate an individual to the tune of $40,000 for a cracker and cheese, five dollar offense. I think that if the Parole Board was objective and was fairly composed, that these individuals would serve a minimum sentence. That's misdemeanor conduct.

CHAIRMAN MADDY: Senator Presley.

SENATOR PRESLEY: On that, were there petty theft priors?

MR. ARNOLD: It was a petty theft prior. He had a horrible record. I mean there's no question.

CHAIRMAN MADDY: He stole a lot of salami and cheese through his life.

MR. ARNOLD: Right.

SENATOR PRESLEY: It's apparently a pattern. Maybe he's got a lot of salami and cheese he never got caught on probably.

MR. ARNOLD: Well, we can't assume that.

SENATOR PRESLEY: Oh, we do. We always assume.

MR. ARNOLD: We assume he has offenses that we've never caught him for and then I guess we could assume that with all other things.

SENATOR LOCKYER: It's sort of like, whenever you see the police car taking somebody away and he's sitting in the back seat there. The citizens standing around saying, "Oh, there goes another innocent man." The presumption of innocence.

MR. ARNOLD: No. Let me put the case in complete context. I mean, the individual went to prison before. He was out of prison

for a matter of months before he reoffended, but his last one was for a petty theft. So you have a series of petty thefts with priors where, in my opinion, this is not speaking from the defense viewpoint, but I mean as a citizen, are you going to allocate that bed space to the individual who commits a petty theft like that or to the violent offender that I think ought to stay in for a longer period of time than he's really ever received. I'm trying to be fair about this and stand not as a member of the Public Defenders Association because I'm not here on that ground -- I want to repeat that -- but, just in terms of allocating prison space, we have to be careful on the lower end, as people are used to saying.

We have a tendency and there's a lot of pressure to send individuals on the lower end to state prison. If you examine the rules of sentencing, for example. I don't know how familiar the Committee is with the judicial criteria for sentencing under Rule 414, for example, the criteria affecting probation eligibility. Rule 421, and 423, and circumstances and aggravation versus mitigation. Well, if you just look numerically at the rules, you have about three or four in mitigation and you've got about ten in aggravation. So it's very easy under the given rules in the sentencing criteria to send an individual to prison and there's an awful lot of pressure on individuals in the system to do that. And I think that if you had an ISL system with a fair Parole Board that they would look at these individuals, compare them to the other 83,000 that they have, and decide fairly whether or not that

individual should spend six months in prison for, which I submit, is enough, regardless of his prior history. This individual I mentioned a minute ago had no violent history whatsoever, but with the prior stacking schemes that we have, I think he received a two-year prison commitment, but he could have served at least five years if they'd have added the three prior petty theft convictions that he served in prison.

So in that sense I don't think that DSL has achieved the uniformity that it was designed for and that was desired.

CHAIRMAN MADDY: Senator Presley.

SENATOR PRESLEY: On that case that you're describing, if the judge would have had the inclination to sentence this person say to 30 days in jail or something and -- with probation... What county was this? Yolo?

MR. ARNOLD: This is Yolo County.

SENATOR PRESLEY: Do they have any facilities like that where a person could serve 30 or 60 days other than the County Jail?

MR. ARNOLD: Oh, sure, we have a county jail.

SENATOR PRESLEY: I know, but other than the County Jail. Isn't the County Jail full?

MR. ARNOLD: Yes, it's full. We built a brand new one and it's full. We have a branch jail.

SENATOR PRESLEY: What I'm getting at is, are there any intermediate facilities between county jail and state prison? Because I think that's a lot of the problems that the counties are facing that a judge doesn't have much of an option. He either

gives him probation, which is largely ineffective because they're all overloaded with caseloads, or he sends them to state prison. That's what we're trying to address. That's one of the recommendations of the Blue Ribbon Commission that we're trying to address is some intermediate-type facilities, preferably at the county level. The problem is, counties don't have the money, so the state somehow is going to have to sort of backfill the money, give them the incentive to develop those kinds of facilities.

MR. ARNOLD: Well, I agree and just to follow up on that for about 30 seconds, it seems to me there's an awful lot of pressure placed upon the judges in a particular county to sentence someone to state prison because, therefore, they're forcing their financial responsibility of housing that individual off on the state, rather than the county assuming the responsibility of incarcerating the individual. Why should a judge sentence an individual to a year in prison when they know if they send him for two years to state, I mean a year in county jail as opposed to two years in state prison when they know the county won't have to pick up the tab, so those concerns are there. Obviously they're not within the sentencing criteria, but those considerations are inevitable.

SENATOR LOCKYER: That's why 56 percent of the people in state prisons are there for less than a year.

MR. ARNOLD: A quick answer to these other questions: Whether inmates are better behaved in prison? That's beyond the scope of the public defender's role. Whether rehabilitation is

more effective under ISL or DSL and whether public safety concerns are met,those are more philosophical and don't lend themselves to my practical experience. It seems that ISL would motivate an individual to behave while he's incarcerated to achieve an earlier release date. Whether they're better treated under ISL or DSL. I think the inmates may be treated better under DSL, but DSL is not necessarily the answer for achieving uniformity of sentencing because sentencing varies so greatly from county to county. And that's pretty much all the comments I have.

CHAIRMAN MADDY: Well, thank you, Mr. Arnold. Any other questions? We appreciate your being here and thanks for filling in.

Mr. Rick Lennon, is Attorney for the California Attorneys for Criminal Justice from Los Angeles. Mr. Lennon.

MR. RICK LENNON: I guess I'm going to take a slightly different tack than a lot of the other people who have been appearing here and suggesting that we go to ISL for increases in public safety.

California incarcerates now more people for longer periods of time than probably any other state in the United States and most countries in the world. There's no doubt that sentences are more complex under determinate sentencing and there's no doubt that sentences have gone up under determinate sentencing from where they were under indeterminate sentencing and I don't think there's been any studies which have shown that recidivists are more under determinate sentencing than under indeterminate sentencing or that

California has a greater recidivism rate than they do in other states in this country.

Most of the people who are incarcerated in prison today, as Senator Lockyer knows and as the Revision Commission has said in their report in January, most of the people who are in prison today are in for either parole or drug violations. If you skip out the parole violator people, it's robberies, burglaries, assaults, and drugs. Those are by far the majority of people who make up the prison system.

Determinate sentencing well serves those people and as some of the speakers have made clear, the whole purpose for determinate sentencing was to make things more uniform. It wasn't to increase pressure on judges who for some reason people think have more pressure from the public than the Parole Board did. The Parole Board clearly has as much pressure as we've seen in recent highly publicized cases as judges do in their own counties.

The purpose was to make things more uniform so that people would treat it more fairly and I think that just as the two present Parole Board members and representatives stated this morning, that purpose still exists that a lot of people don't want people's decisions on how long you should spend in prison made on gut reactions, and yet the two Parole Board members said, you know, "I have this ability to make these gut decisions and I get these gut feelings as to how long this person should do" and that is exactly how the Parole Board operated. Whether or not they were prejudiced against blacks or against poor people or against

people who were resistant or defiant of authority as some people have claimed under the old indeterminate sentencing -- the old Adult Authority -- whether or not any of that was true, or whether or not they just operated on gut feeling. But the reality of the situation was that someone going before an indeterminate sentence parole board had no idea when they would get out and had no idea what they had to do to convince the Board that they should get out.

It would be great if everyone who went before the Parole Board. You could say this person's going to reoffend and this isn't and no one ever goes to prison unless we can somehow determine that they're going to re-offend, but I don't think we have a system which is capable of doing that.

It seems to me that under the present system and under the system that SB 25 is designed to make some corrections in, we have an ability to make an ISL determination of the people at the high end. The mentally disordered violent offender bill that Mr. Cohen has been immensely involved in drafting and seeing enacted into law, clearly takes out those people and basically translates into an ISL sentence. Those people who commit acts of violence and who have some mental disturbance in their background for doing so and the habitual offender statute which hasn't all been drafted into law under SB 25, clearly expands the use and the imposition of indeterminate sentences for those people who commit some acts of violence and who have some past background of involvement in the prison system.

So I think the law as it exists today and as it will likely exist in the near future if and when SB 25 passes, I think, deals with the need to protect the public and to translate the violent people and put them under an ISL system through habitual offender and through the MDVO provisions.

I would suggest, though, that one of the things, as some speakers have pointed out that DSL does now, is that it sweeps within its immense grasp lots of people who maybe don't need the kind of time that they're getting under the law. The people who are under mandatory full term consecutives for sex offenses. Some of those people are terrible people. Some of the people are bad people. Some of those people will reoffend and maybe they need to be incarcerated for upwards of a hundred years. Some of those people who are swept within those provisions do not need to be so incarcerated.

So we would suggest that what this committee should look at is the possibility of making a hybrid system in which the court imposes a determinate sentence that sets a minimum and a maximum sentence to which the person is incarcerated. And that within that range that you say you take a double the base term and that from that period up to the maximum sentence, the sentence could then be translated into an indeterminate sentence.

That the Parole Board would then have the ability which would probably not be used very often, but at least they would have the ability to release someone before the end of an incredibly long maximum period of time when they could say with some kind of

assurance that they don't think that that person would reoffend. At least what it would do is provide the safety valve that indeterminate sentence did under Ronald Reagan and the Adult Authority then. That it would allow people to be released from prison so that the prison population doesn't skyrocket and include a lot of people who maybe don't belong there.

There may be ways to get rid of a lot of the people who are incarcerated. The 56 percent who are going in for less than a year and maybe that will do a lot if we can come up with programs to deal with those people outside of the prison system to reduce prison populations to where we can provide some kind of services to the long term and violent offenders who are in there to see if we can do something about changing their attitudes and the way they behave.

But an indeterminate system which has as its maximum a determinate maximum, but which gives the Parole Board some ability to release people sooner than their maximum if the Parole Board determines that that's feasible in light of public safety, we think would be a good idea for people to look at.

CHAIRMAN MADDY: Thank you, Mr. Lennon. Questions? Mr. Cohen?

MR. COHEN: What you're suggesting was actually proposed at the time SB 42 was enacted. It was at that time in the Criminal Code. The schedules that are in SB 25 are the same concept. You rank the crimes by seriousness and then you have, like one to ten years. It was two to five and went then two to ten, depending on

the seriousness of the crime. Then it would fit into an ISL system. At the time, the real question was, would the Parole Board be able to meet the Rodriguez requirement of developing some objective standards so that you could have enough uniformity to please the question of due process. Do you feel that the present way the Board is operating with its matrix systems meets that requirement? They're not operating the way they were in 1977.

MR. LENNON: Yes, I mean, the statistics and the people involved with lifer hearings at the present Board of Prison Terms, I mean, hardly anybody gets released these days. There's very few determinations of suitability of parole that anyone could make a decision that the Parole Board could have any criteria to do that. But I think on the other hand, when you're dealing with first degree murderers and second degree murderers and when you're dealing with a populace in the state of California that really wants those people to do substantially more time than they did pre-DSL, that that can't answer the question of whether or not the Parole Board would be capable of making a determination of who should be released sooner.

CHAIRMAN MADDY: Any other questions? We appreciate it very much. Thank you for being here.

Mr. Gary Mullen, Executive Director of the California District Attorneys Association from Sacramento.

MR. COHEN: He's just been appointed Municipal Court Judge, too.

CHAIRMAN MADDY: I understand, Mr. Mullen, that congratulations are in order.

MR. GARY MULLEN: Yes. I won't take too much time. I know that it's getting near the lunch hour. I provided a report that my Association did, in part, on this subject and we asked Senator Lockyer to carry a bill which he has introduced, SB 25. It's a report that we did and one of the reasons we did the report on the sentencing structure was due to the incredible complexity we have in the sentencing structure right now in California. But also because there were many legislators, in fact my former employer, Senator Davis, that had considered going back to the ISL system and my Association is reasonably comfortable with, in concept, the present hybrid system. We would not support going back to a pure ISL system and as is noted in our report, and I'll be very brief, is that there were constitutional flaws in our view with the ISL system. And basically, you know, for the average, every day auto thief or burglar, the Parole Boards, because of constitutional cases that came down, Lynch, Morrisey, and others, required to give that individual a parole date. It would be unfair and be violative of the cruel and unusual punishment provisions of the Constitution, as well as due process, to hold the auto thief or someone in there for a life term, compared to someone else who might be for a more serious crime released at an earlier date. There were flaws in the uniformity of ISL and there were flaws in the hearing processes. And so if you go back to ISL, in our view,

you're going to have serious problems because of those cases that are now on the books in California and they apply and you will have to deal with them if you are going to apply it across the board.

We are satisfied with the present crimes that are ISL, but for across the board, is that we would like to have a system that you have now where the prosecutor, the defense, everyone can bring the evidence and the facts, mitigating factors, the victim can make a statement, all of those things can be done, so the judge who has heard the facts during the trial or in the probation report if it's a case that's going by plea. In the case where you have an ISL, you have a Parole Board, a distant body somewhere that may be far from the community, from Modoc County or wherever the crime occurred. It's a body that has no real link to that community or has contact with the citizens there and we would like to have a system where the victims, the court, everyone has contacts with the community. We think that's important in making sentencing decisions. Also, and noted in our study, there's a law journal article from the University of Pacific on the fact that governors in the past, under ISL, have used their powers to release prisoners across the board to deal with overcrowding. We see that as a fundamental issue of public safety. Certainly no governor would intentionally release somebody that would go out and commit other crimes and they try to be selective, but we think the Legislature should have input. If there are severe overcrowding problems, if there are issues like that, the

Legislature, we view, should make those decisions and make the policy decision rather than a remote parole board that has no contact and really doesn't understand that individual that is just being given a blanket release. That was done and there are graphs that can show you after elections, the rate of release goes up. Prior to election, the rate of incarceration or holding people in through the parole hearings goes up.

One last thing and I will answer any questions you have. The goal of ISL has been rehabilitation and I would remind you there are many, many celebrated cases and that it is a flawed system and there is no perfect system. Theodore Frank was a model prisoner and he was released under the old MDSO system as a model reformed individual who was a child molester. He was released and he went out to commit one of the more celebrated crimes at least in southern California, where he killed a little child and horribly molested her prior to killing her. There is no system by which you can look at an individual and say they're reformed. And anybody that's gone to lifer hearings, it's just a relentless, you know, rogues' gallery of individuals that go before the Parole Board of axe murderers, horrible, horrible crimes, and when that same Parole Board hears a relatively light-weight spousal murder or a lesser crime, such as an auto theft, they're going to release those individuals, and so they become inundated and desensitized and that's what happens to a parole board and that's why we want to keep sentencing generally as it is a hybrid system, where the local judge can make the decisions based on that case and set the sentence within the range determined by the Legislature.

CHAIRMAN MADDY: Why don't you remain there. Senator Nejedly would like to come on up for a moment.

SENATOR NEJEDLY: I would just like to make the comment that there's been a great deal of constructive testimony here today and given the attention it deserves. But it's strange that everything that's been said today was said 15 years ago. Nothing has really changed. Voltaire was absolutely correct.

But in any event, there was one comment made by the Judge and I particularly appreciated the comments from Mr. Mullen, or is it Judge Mullen now? Judge Mullen now. But in any event, those observations were made 15 years ago. They're just as accurate and require as much, as well, your attention as they did then. The comment that the previous judge made from Fresno County was that there was an increase in recidivism incident to, and I don't like to call it DSL, that sounds kind of profane to me. But in any event, the Determinate Sentence Law. I would examine those statistics very carefully. You know, whatever the recidivism rate was before and see the effect upon that rate if you find a difference of the introduction of new kinds of crimes in the state prison system and then particularly drugs. Because I just don't see any intervening cause, particularly of the Determinate Sentence Law that would have increased recidivism in the various categories of crimes generally.

But, I think you've done a very constructive job in reviewing this and I would hope that you would keep in mind the essential foundations for the Determinate Sentence Law, which I think, from

the comments of Mr. Mullen, are appropriate today as they were 15 years ago.

CHAIRMAN MADDY: Thank you, Senator. We thank all the other witnesses for being here and thank the members of the Committee for being with us today.

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APPENDIX

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APPENDIX

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PART I

WITNESSES' STATEMENTS AND COMMENTS OR ARTICLES

PART II

STATISTICAL INFORMATION

PART I

APPENDIX I-A

SENATOR JOHN NEJEDLY COMMENTS

JOHN A. NEJEDLY
400 MONTECILLO DRIVE
WALNUT CREEK, CA 94595-2304

April 12, 1990

Senator Ken L. Maddy
Chairman
Joint Committee for Revision of the Penal Code
1100 J Street, Suite 320
Sacramento, CA 95814

Dear Ken:

Thank you for your letter of April 6.

Perhaps these comments on the testimony may be helpful for the record.

1. S.B. 42 brought together an unusual group of interests that either supported the legislation strongly or simply finally did not oppose it tho' there was never any universal enthusiasm by reason of differences of opinion on periods of incarceration.
    a. Governor Jerry Brown
    b. Clinton Duffy
    c. Anthony Cline (A.J. Cline)
    d. Lowell Jensen D.A's Association
    e. ACLU
    f. Prisoners' Union (Willie Holder)
    g. Professor Ray Parnas U.C.D.
    h. Mike Salerno Counsel
    i. Chief Justice Wright
    j. Attorney General
    h. Senator Song

2. The legislation arose out of my personal concern for statewide inconsistencies in sentencing. Disparity of sentences among caucasian, black and hispanic offenders. This not only was noted at the trial level, but at parole hearings. This sentencing disparity was consistently noted as underlying riots in other states particularly New York - Attica.

3. On this point, at the hearing the correctional people claimed rioting has increased as a result of S.B. 42 and determinate sentencing. Any review of the last twenty years will immediately disprove this allegation. The fact

is that SB 42 has increased confinement to state prisons and has increased the time of confinement generally far beyond increases in prison capacity. The "riots" of recent vintage arise from overcrowding, lack of yard space for physical exercise and poor feeding practices produced by budget increases far lower than population increases. Discussions at state prison facilities involved in recent disturbance problems do not evoke the bitter rationale of New York, Illinois, California, Pennsylvania and Michigan violent riots of the fifties and sixties arising from sentence disparity and failures to get a date with consequent frustration and anger.

4. While D.A., I kept extensive records of times actually served and visited San Quentin once each week. After determinate sentencing, the common disquiet induced by disparate administrative sentencing and longer terms served by non-caucasian and other lesser attractive or non-conforming, i.e. not subservient inmates no longer is evident. The universal complaint today is over-crowding and that is serious.

5. SB 42 originally used average administratively fixed terms to establish sentences. The actual time served under indeterminate sentencing, however, was so low in the general opinion once actual times became evident as to require increasing terms as the bill passed thru the legislature. This was the principal complaint of the ACLU. It was constantly pointed out in the process that the legislature, in the future, would set terms and if the public felt sentences to be too low, the legislative would increase them, and it has.

6. When the governor determined to relieve overcrowding in the early seventies, the sentencing boards were ordered to release large numbers of prisoners before their dates and give additional prisoners an earlier date. At first, Ray Procunier the then Director supported this relief valve process and opposed the legistation. However, as the effects of this increased disparity appeared and time to be served became dependent upon pressures of prison population and prisoners could induce early release by disturbances in prison, Mr. Procunier later came to accept the change to determinate sentencing. The irony of the situation arose when disturbance leaders who created the pressure to provide for mass early release for other prisoners were themselves faced with longer terms as punishment.

7. Continuously throughout the long process of SB 42, the legislature was advised that determinate sentencing would result in more state prison sentencing and for longer terms and that capacity must be increased. This has not happened and as a result it can properly be said that determinate sentencing has created a problem. However, those who demand mandatory and longer term sentencing must provide additional facilities or no system will work.

8. During the hearing, one witness testified "gut feelings" can determine potential violence or "rehabilitation" for release. If the hearings on SR 42 did nothing else, it should have put this myth to rest. The "medical model" is no longer a proper part of penology and it was surprising this claim is still presented. During the hearings on SB 42, Clinton Duffy, the former warden at San Quentin prison and psychiatrists and psychologists without exception put aside the claim that potential violent conduct of any individual capable of generally acceptable conduct could be reliably predicted.

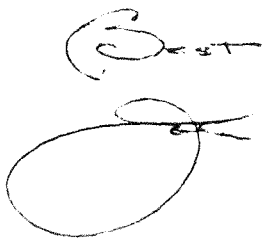
9. As it was point out in the hearing, during the progress of SB 42, two problems were left unresolved because consensus could never be achieved or the bill get out of Criminal Justice in the Assembly. Habitual criminal sentencing, seriously aggravated and unusual cases and the even more unusual cases of an inmate who cannot cope or whose behavior clearly demonstrates an obvious community danger.

   In the time available, these issues could not be resolved and still retain support for the principle. Subsequent legislation has attempted to provide for these very limited cases. Hopefully with the examples of recent circumstances, a means to take these incidents out of the process can be provided.

10. Administratively established terms with mass release provided to relieve overcrowding consistently demonstrated longer sentences served by minorities and those unable to establish a sophisticated response to system procedures. The process denied public knowledge or participation in the hearing process and operated absent any knowledge of the day to day contacts of the court with the accused during trial. It was a system predicted upon totally discredited capacity to determine future conduct or the point at which "rehabilitation" was reached. A system of unfairness and discrimination was obvious. Alternatively,

determinate sentencing provides an opportunity for consistency and fairness in sentencing, opens the record to the public at and during the time of trial and eliminates the cumulative resentment established by arbitrary and uncertain establishment of times to be served.

Good luck and thanks for the invitation to join the legislature process but,



PART I

APPENDIX I-B

REHABILITATION WAS WORKING, T.L. CLANON, M.D.
CALIFORNIA LAWYER, MARCH 1982

Rehabilitation was working

Determinate sentencing results in a greater recidivism rate—and leads to more victims of crimes

By T. L. Clanon, M.D.

In 1976, the state of California made an abrupt and nearly complete change in its approach to sentencing felons. After more than 60 years of handing down indeterminate sentences to those convicted of felonies, the Legislature voted to give determinate sentences, fixed by the court at the time of sentencing, for all criminal acts except homicide. And, after more than 30 years of pursuing—or at least claiming to pursue—an imprisonment and parole policy based on rehabilitation, the Legislature enacted a statute that declares that the purpose of imprisonment is punishment—and makes no mention of any other goal.

As a psychiatrist with many years of experience with the California Department of Corrections and with the prison systems of other states, I was dismayed considerably by this new statute—especially since it seemed that no one, liberal or conservative, could be found to speak well of the philosophy of treatment with which I had worked so hard. Unfortunately for all of us, the new model does not seem to be working.

The statistics bear me out: The rate of recidivism for released prisoners jumped with the introduction of the new policy and has risen every year since then. The prisoners released to parole in 1978 have returned to prison with new felony convictions at a rate that is about twice the rate for those released in 1970. Even more significant is the fact that this rate of reconviction had declined steadily during the 1960s, when rehabilitation was being pursued vigorously. A positive trend had been established that has been reversed, subsequent to the decline in interest in treatment and the cessation of paroling decisions based on evidence of rehabilitation. In spite of opinions to the contrary, the now-abandoned model of correctional treatment may have been working after all.

Let us look at statistics from *California Prisoners*, published by the California Department of Corrections. The following figures are taken from the years 1979, 1974–75 and 1968. (Though the figures on page 14 describe men released after serving a term for robbery, the statistics are representative of those for other crimes as well.)

In my opinion, this worsening of parole results is due to abandoning such aspects of the indeterminate-sentence and treatment model as allowing the courts discretion to decide when to parole prisoners and how long to provide community supervision of parolees. When signing the bill that eliminated indeterminacy, Governor Edmund G. Brown Jr. said that the new law would "make the judge, at the time of sentencing, lay out exactly what the cost of crime is. The other [indeterminate] system allows the sociologists and the experts to decide when they are ready to leave. This bill recognizes the fact that we are not that smart, that we can't psych out each individual...." The statistics suggest to me that the governor was right to the extent that we cannot "psych out" every individual, but wrong to the extent that we accurately can size up enough of them to make a difference.

The most striking change in release practices during this period occurred in 1975, when the Board of Prison Terms paroled more robbers than had been released in the two previous years together. That year, anticipating the determinate-sentence law that passed the following year, the Board of Prison Terms adopted a policy of disregarding evidence of rehabilitation. Essentially a determinate-sentence philosophy, this resulted in the release of a large number of relatively unselected prisoners. The result was the largest increase in both rate and number of parolees coming back with new felonies.

Finn Davis

These 1975 statistics are given even greater significance when analyzed in light of the fact that there had been two prior instances when the Board of Prison Terms made large numbers of releases, probably forced by the pressure of a high inmate population. This occurred in 1965 and again in 1971, when a larger number of robbers were paroled under the old policy of assessing readiness for release and evidence of rehabilitation in determining length of sentence.

During the late 1950s and early 1960s, programs of education, counseling, psychiatric treatment, expanded visitation rights and other bridges to the community were developing and were reaching more prisoners. Such programs were important not only for their direct effects but also for indirect ones mediated through the expectation they communicated to the staff and prisoners and parolees. As I look back to that period, I am struck by the fact that there was little sense of accomplishment or awareness of any high degree of success among those of us engaged in the often discouraging business of corrections. Yet, as I now think of it, that period seems full of accomplishment reveal-

T. L. Clanon, M.D., is a staff psychiatrist at the Northern Parole Outpatient Clinic in San Francisco and serves as a consultant on forensic patient care and mental-health programs for offenders. He was superintendent of the state Corrections Medical Facility at Vacaville from 1972 to 1980.

ed not only by statistics, but also by comparison with the sterility of these last few years, when nothing new has been accomplished and it has been difficult to hold back the destruction of the best efforts of the past.

After nine years away from treating individuals, while I was administrator of the Corrections Medical Facility at Vacaville, I again am doing clinical work with parolees in the community. The contrasts with 10 years ago sometimes are striking. Ten years ago, the men I saw coming out of prison were released only when they had an approved parole plan, including a job, a place to live, and, when indicated, an appointment at a mental health clinic.

I recently interviewed a man serving a term for robbery who was to be released shortly, on the date set by the judge three years earlier. He told me that he was surprised to see me, and that he was not thinking about getting out of prison because he found it hard to believe he soon would be out. A release plan had been prepared with his counselor according to routine, six months earlier, but he could not recall what it was that they had planned. He thought he would live with his mother for a while and was not sure whether he would look for work or join the gang he had belonged to before. He had been in psychiatric treatment before in the community, but had not had any treatment in prison and was surprised to learn it might be part of his parole program.

Ten years earlier, his years in prison would have begun with a diagnostic study aimed at identifying the factors that contributed to his criminal behavior. The reception and guidance centers in which this was done have been changed to short-term processing centers in which the only question addressed is what prison is most appropriate for the prisoner. Under the indeterminate-sentencing program, there would have been records of several board hearings for which progress reports had been prepared. These would lead to a hearing, parole decisions would be made and the term fixed.

This prisoner I describe has lost not only the benefits of specific rehabilitative efforts, but also the challenging of his own desire and resources for change. The old system, at least, asked him questions. The new system says, by its silence, that we have no interest in him, in what he did in the past, or in what he will do in the future. Many prisoners admittedly did not respond – but some did; and for some of them, it helped them choose not to return to criminal behavior. To me, if society demonstrates a lack of interest in the convicted criminal's motivations and personality, it means society also is not concerned with his victims, both past and future.

What should we do about it? I recognize that even if you accept my interpretation that increased parolee crime has resulted from the changed social policy, you still may like the new policy. Indeed, the 1976 law did not promise to decrease the parolee crime rate. It was passed because of an unlikely meeting of the minds of those who thought indeterminancy was soft on crime (because people were released too early and

Continued on page 20

Male robbers returned with new convictions by the end of one year of parole

Year	Total released	Total returned	Percent returned
1978	1,936	272	14.1
1977	2,243	296	13.2
1976	1,786	216	12.1
1975	2,877	336	11.7
1974	1,062	95	8.9
1973	1,145	96	8.4
1972	1,894	168	8.9
1971	2,328	189	8.1
1970	1,742	121	7.0
1969	1,490	92	6.2
1968	1,225	83	6.8
1967	1,197	91	7.6
1966	1,182	106	9.0
1965	1,418	164	11.6
1964	977	89	9.1
1963	887	104	9.1
1962	1,192	186	15.6
1961	933	128	13.7

viewed too sympathetically by experts like myself) and those who felt it violated the personal integrity and rights of prisoners (by subjecting them to the "brainwashing" of experts like myself).

In my estimation, however, there is no argument that the "bottom line" in corrections is the number of people who become victims of crime. If the new policy is leading to an increase in crime, then it needs to be changed. How can a policy be tough on crime if it leads directly to more crimes? How can a new policy protect personal integrity and rights of prisoners if it results in more ex-prisoners committing felonies and returning to prison? One also must take into account that the statistics on parolee felonies are only an indicator rather than an actual measure of the number of victims.

The prisons increasingly are overcrowded and violence-ridden, and – with the paucity of effort and spirit which has come to characterize the state's correction effort – they seem headed toward further decline. Richard McGee, who led the Department of Corrections until his retirement in 1967, was quoted last fall in the *Sacramento Bee* as saying, "It is high time for this state to begin taking a global view of its total correction problem and make some high-level policy decisions – the alternative surely is more and more crisis management leading to political embarrassment, the inhumane treatment of people and inevitable bloodshed."

McGee calls for the creation of a special bipartisan commission to look at overcrowding in the prisons, a problem that is even more acute today. The commission should utilize the information that only now is becoming available to assess the changes that have occurred in correction policy since 1975. The figures cited in the McGee article ask us – as I do – to reconsider where we are going with the California penal system. We again should emphasize and support programs that diagnose and prepare prisoners for release and give individualized supervision to parolees. We also should restore indeterminate sentencing – at least as an option for the court to exercise at its discretion.

The Sentencing Act of 1976 was a mistake for which we only have begun to pay. At the time, I concluded it was passed into law not in a spirit of reform and progress but in a spirit of cynicism and heedlessness. Even beyond the act's own provisions, its nihilism is being translated by action and inaction into public policy that will destroy progressively the demonstrated ability of our correctional system to rehabilitate criminals and prevent crime. The mistakes of the past should not be repeated, but it is also a mistake to abandon successful programs in order to correct these errors. □

PART I

APPENDIX 1-C

IMPRISONMENT IN CALIFORNIA: THE DETERMINATE SENTENCE LAW AFTER TEN YEARS, RAYMOND I. PARNAS, PROSECUTOR'S BRIEF, SUMMER 1987

Raymond I. Parnas

Imprisonment in California: The Determinate Sentence Law After Ten Years

In 1976, the California Legislature dramatically changed most prison sentencing procedures. The state switched from the most indefinite or Indeterminate Sentence Law (ISL) in the country to the most fixed or Determinate Sentence Law (DSL). The new prison sentencing system became operative July 1, 1977, and subsequently influenced legislative changes in a majority of the other states. Commentary began immediately and has never ceased. Only the increased media attention this year is new because of the law's ten-year anniversary and the release of a notorious criminal.

Under the old ISL, statutes provided a minimum and a maximum prison term for most felonies. The ranges were extremely broad. Indeed most crimes carried a life imprisonment potential at the upper end together with comparatively little, or in many cases, no minimum specification. Consistent with this statutory indefiniteness of prison term was the possibility of probation for most crimes, i.e., no prison time at all.

With no statutory or judicial guidelines, the ISL judge had the discretion, in most cases, to choose probation or prison. However, if the decision was imprisonment, the ISL judge made no order as to how long the convict would be incarcerated. Later, a parole board would decide that issue. For some, the board's decision could be to release as early as one-third of the statutory minimum, whereas others might never be released. Theoretically, both decisions could be made for co-defendants for the same crime.

Indeterminate sentence procedures stem from the early 20th century medical model of criminal causation. During that period, most crimes were thought to be the product of a sick mind. At the time, optimism was high about our ability to diagnose and treat. Cure or rehabilitation would be the result. As soon as that occurred, release was to be ordered, so the theory consistently went, no matter how serious the crime or how soon after incarceration. But if no cure occurred in the judgment of the experts (the treaters and parole board), then no release was ever to result.

By the end of the 1960's, the medical/psychological theory of criminal causation, together with its concommitant rehabilitation/treatment model, was being increasingly questioned. Criminologists postulated the economic or cost-benefit analysis of crime. Rather than being irrational acts of a sick mind, many crimes, they argued, stemmed from rational judgments that the benefits derived from committing the crime outweighed the costs. Even if the cause of some criminal behavior was attributable to mental illness, the ability to accurately diagnose individual problems, prescribe effective treatment, and predict a cure was challenged by most experts. High recidivism rates buttressed their position.

Not only was the theoretical basis of the ISL undermined, the unspecified and open-ended sentence lengths provided fertile ground for subsequent wide abuse of discretion. Governors directly influenced their appointed parole boards to shorten or lengthen terms of imprisonment based on political and economic considerations. For example, terms were shortened during part of Governor Reagan's terms for budgetary reasons. Prosecutors and defense attorneys negotiated guilty pleas by dropping multiple life or high top charges in exchange for a plea to one. Paradoxically, inexperienced defendants were unaware that the parole board frequently considered the dropped charges

. . . the DSL has significantly raised the level of sentencing awareness and debate nationwide and directly contributed to moving a majority of states away from the abuses of indeterminacy.

just as if they had been proven. Often, the defendant served just as much time as if he had exercised all of his constitutional trial rights. Guards used unfounded or minimal, non-criminal disciplinary citations as a leverage which often resulted in parole board retention of a convict who would otherwise have been released. Some parole officers exercised their discretion to return parolees to prison in a similarly abusive manner. Many argued that prison unrest and violence was fostered by these abuses. In addition to all of these concerns, the uncertainty of the length of term made it impossible for families to plan for the future. It was also said to contribute to increasing prison control problems.

Clearly, the time was ripe for changing the ISL in the early 1970's. Promoted by Governor Jerry Brown, the DSL materialized in exactly two years from general concept to explicit legislation. He agreed to sign the bill if law enforcement supported it, which they did after several negotiating sessions sponsored by the Governor's Office.

The DSL, *as initially enacted*, does not affect misdemeanors nor does it limit the possibility of probation or mandate prison for any felony offense. It does, however, expressly state that if a prison term is imposed, its purpose is punishment. Given the emphasis upon objective facts surrounding the crime over diagnosis, treatment, and predictive speculation about the offender, attorneys bargain over quantifiable amounts of time. In addition, judges impose specific prison terms prior to imprisonment.

Judicially set terms under the DSL can not be increased or decreased by any board, thus eliminating that major area of ISL abuse. Although some potential for abuse remains through institutional decision-making mandated by the availability of sentence reductions for good behavior and work or program participation, procedural safeguards limit this possibility. However, the Governor's pardon and commutation powers are left wholly untouched. On the other end of the spectrum, extended confinement is still possible through conviction and sentence for any crimes committed in prison or by invoking the mental health, involuntary incarceration process when appropriate.

Under the DSL the prison terms to be imposed are legislatively prescribed. Some flexibility in prison sentences for the same crime committed under differing circumstances is available, however. This is accomplished by the Legislature providing three possible terms for each charge—a norm, a mitigated term, and an aggravated term. Enhancements to the base term selected are available where multiple offenses, weapons, injury, and priors are charged and proved. Selection of probation or prison, an appropriate base term, and enhancements is aided by Judicial Council guidelines mandated by the DSL.

As originally enacted, not more than two years separated the upper and lower unenhanced terms. The three terms specified for each crime were legislated because their narrow range reflected the actual time served for each crime by 80% of those released under ISL sentences in recent prior years. The intent was to retain prison terms among the longest in the United States and provide narrow flexibility while eliminating undue disparity created by the upper and lower 20%. Shortly after passage, however, that same legislature began increasing and spreading the three base terms, significantly in many cases, by as much as eight years or more from lower to upper term. Nonetheless, the DSL structure remains unchanged: the Legislature specifies three possible terms plus enhancements, the judiciary fixes a period of confinement with sentencing aided by legislatively mandated guidelines, the institution reduces incarceration by good time, work and program credit, and parole agents provide monitoring upon release within limited legislatively set maximums.

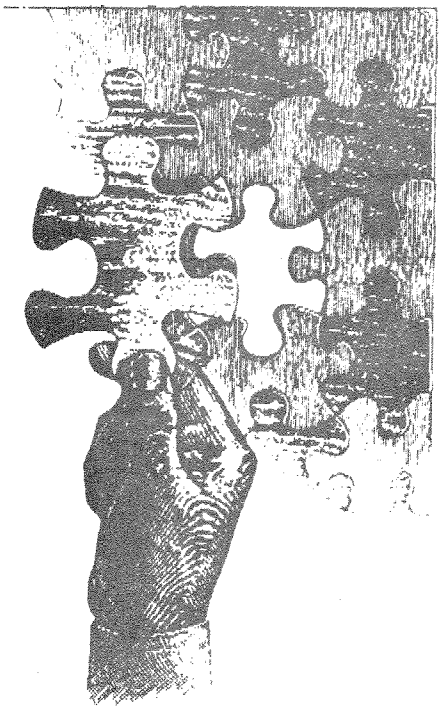
Over the DSL's ten-year history, critics have alleged that it caused: 1) lack of clarity and complexity in sentencing, 2) increased prosecutorial plea bargaining leverage, 3) elimination of rehabilitation programs, 4) prison overcrowding, 5) premature prison releases, and 6) irresistible public pressure on legislators for irrational sentence increases. A brief examination of each allegation follows.

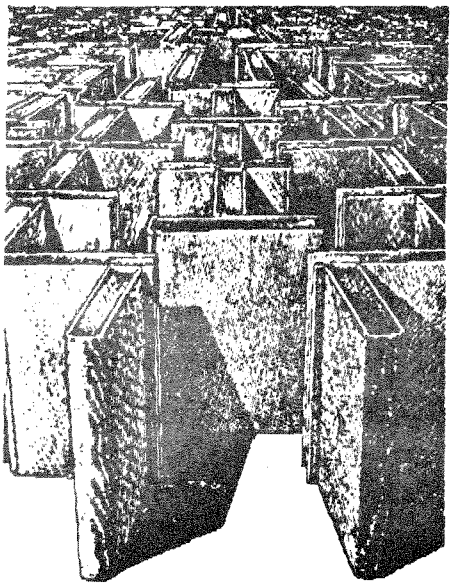
There is no doubt that the DSL has some unclear provisions and requires some complex calculations. There are several reasons. First, as much language as possible from the ISL was carried over to the DSL in order to lessen the impact of the dramatic change being made, though the ISL language was actually being used in a different context. Second, this significant change in the law only occurred because of the support of a broad spectrum of philosophical and political views, all requiring some accommodation within the DSL's provisions. Third, the sheer bulk of the law and the psychological effect of significant change on comparatively staid legal functionaries necessarily produced resistence. Finally, probably the most significant cause of most of the current DSL's vagueness and complexity stems from the immediate lobbying and piece-meal legislative tinkering with a law, which as initially passed, was conceived as a comprehensive and internally related whole. Nonetheless, no provision of the law has been held unconstitutional, and the demand for appellate clarification has lessened. Most importantly, most judges and lawyers desire no additional significant felony sentencing changes.

Judicially set terms under the DSL can not be increased or decreased by any board, thus eliminating that major area of ISL abuse.

. . .probably the most significant cause of most of the current DSL's vagueness and complexity stems from piece-meal legislative tinkering.

Plea bargaining leverage was never greater than under the ISL. Life tops influenced pleas to almost anything perceived as less, despite uncertainty as to the actual time to be served. DSL critics are correct in noting, however, that substantial leverage remains not only through routine prosecutorial charge selection but especially through the





availability of numerous and legislatively broadened enhancements. Nonetheless, prior knowledge of the actual time to be served under the DSL provides for a truly informed waiver of trial rights by the accused as well as an adequate basis for evaluation of the deal by the district attorney and the public.

The DSL did eliminate rehabilitation as the theoretical purpose of imprisonment, but few, if anyone, had believed in its efficacy under the ISL for a long time. Thus, although rehabilitation programs may have been reduced after passage of the DSL as critics have alleged, it is doubtful that the new law was the prime cause. Misdemeanor sentencing and felony probation were left untouched by the DSL changes. Furthermore, rehabilitation was directly supported by attaching a portion of DSL good time credit to participation in programs. In addition, serious offenders still sentenced under existing ISL provisions theoretically remain dependent upon rehabilitation for release.

Ironically, one impetus behind the enactment of the DSL was the violent crime spree of an ISL parolee.

Finally, as a means of controlling pent up energy resulting from boredom, programs should be made available to those desiring them.

Similarly, prison overcrowding is not a direct result of the DSL, as initially passed, because, as previously indicated, its sentences reflected the terms served under the ISL in 80% of the releases. This conclusion is further supported by the Legislative Analyst's evaluation of the DSL's budget implications prior to passage. The law did, however, provide the means for the Legislature to increase terms later. This they did, along with mandating prison for some offenses, thus reducing the judge's discretion to order probation. Whatever the cause of overcrowding, legislative increases have currently slackened. In addition, new prisons are being built.

The DSL also precluded the parole board from using its release power for non-ISL rehabilitation purposes, such as easing overcrowding. However, an easy solution to this problem, used in Michigan, has always been available. A politically courageous governor could promote legislation authorizing him to utilize emergency powers to release convicts within 90 days or so of the date they otherwise would be released without significant impact on public protection.

Some critics say prisons are overcrowded because the DSL incarcerates too many people and for too long. Yet in the same breath, they or others argue that the DSL is responsible for the premature release of dangerous criminals. Of course, a prime reason for the demise of the ISL and the theory behind the DSL, is the expert's inability to predict future dangerousness. Indeed, shortly after passage of the DSL, then Senator Nejedly posed the following question at the legislative hearings held by the DSL's author: "What is the best predictor of future violent acts?" Dr. Clannon, a psychiatrist and then Superintendent of the California Medical Facility at Vacaville for many years, answered: "The person's past criminal record"—a criterion hardly needing experts to make the determination. In addition, studies of the accuracy of such predictions, regardless of the criteria used, show an error rate of 40% to 80%.

. . . prison overcrowding is not a direct result of the DSL, as initially passed.

Ironically, one impetus behind the enactment of the DSL was the violent crime spree of an ISL parolee in the San Francisco bay area in the mid 70s. Nonetheless, whatever the sentence law, so long as *any* convicts are to be released some will occasionally commit notorious crimes. That is simply the price our society must be willing to pay if it wishes to remain open and humane.

Finally, some critics of the DSL structure urge the establishment of a sentencing commission to provide judges with term ranges as a compromise between a return to ISL parole boards and the current law's reliance on legislatively set terms. Many states have adopted that approach as a means of providing a safety valve for overcrowding and to eliminate the political posturing of public officials by constantly increasing sentences. Despite the seriousness of these concerns, before turning to a commission for salvation it should at least be recognized for what it really is. Releases without the lengthy public deliberation of a legislative body smack of a return to the political use of, and arbitrary abuses by, the ISL parole boards. More importantly, the commission system should be acknowledged as an elitist non-democratic approach to criminal sentencing. If the concept of representative government means anything, surely it demands that the people's representatives openly debate and ultimately select the sanctions to be imposed on those who violate their constituent's rights no matter how much individual constituents may disagree with the outcome.

To sum up these ten years since enactment of the DSL, whatever its problems, the California law has significantly raised the level of sentencing awareness and debate nationwide and directly contributed to moving a majority of states away from the abuses of indeterminacy. Indeed, the United States Bureau of Justice Assistance recently announced funding for additional states to reform their criminal sentencing systems to provide more structured, uniform, and consistent sentences with limits on judicial discretion. If the DSL is to have lasting vitality here, our politicians will sometimes have to behave like statesmen in the best traditions of those described in JFK's *Profiles of Courage*. Accordingly, governors and legislators will have to refrain from the piece-meal raising of sentences and must prevent the return of broad disparity. Moreover, they must cease contributing to public hysteria and misunderstanding with irresponsible and misinformed statements and proposals in the aftermath of highly publicized prison releases of notorious offenders or arrests of parolees for heinous offenses. end

Raymond I. Parnas is a Professor of Law at University of California, Davis. He was co-draftsman of the Determinate Sentence Law as originally enacted.

PART I

APPENDIX I-D

DETERMINATE/INDETERMINATE SENTENCING

DETERMINATE/INDETERMINATE SENTENCING

ISL

* Primary purpose of imprisonment is rehabilitation
* All felonies
* Parole authority determines length of prison and parole terms
* Prison population control (ISL release valve)
* Disparity in sentencing

DSL

* Primary purpose of imprisonment is punishment
* All felonies except crimes where life term is imposed
* Legislature determines terms
* Uniformity in sentencing

The hearing will examine the above aspects of determinate and indeterminate sentencing, but will not focus on the "technical" complexities of the DSL. The Committee will hear testimony as to whether or not the DSL has achieved its objectives, whether some crimes or criminals are best handled by indeterminacy, and whether public safety goals might better be met by a hybrid system.

HISTORY:
1917-76 -- California under indeterminate sentencing law.
1976 -- SB 42 authored by Senator John Nejedly.
July 1, 1977 -- Uniform Determinate Sentencing Act became effective.

EVENTS LEADING UP TO DSL:
The ISL vested in the Adult Authority two distinct discretionary functions: sentence-fixing within the statutory minimum and maximum terms for the inmate's crime and parole setting. The court had little control over the length of the

sentence. It merely sentenced the defendant to prison "for a term prescribed by law." The parole board would then fix a term somewhere between the statutory minimum and maximum (often a span of one year to life), and in most instances would eventually release the prisoner on parole. The parole board had vast discretion and eventually came under attack as being either too lenient or too harsh, and thus for its inability to choose accurately the optimum time of release.

A line of cases attacked the uncertainty and broad range of indeterminate terms as being cruel and unusual punishment. Then, in In re Rodriguez (1975) 14 C3d 639, 122 Cal. Rptr 552, the Supreme Court held that the Adult Authority must promptly fix terms within the statutory range that are proportionate to the culpability of the individual offender. Here, the prisoner had served 22 years of an indeterminate sentence of one year to life for lewd conduct with a child and the Adult Authority had failed to fix a term less than the life maximum. The court concluded that the 22 years of imprisonment were excessive and disproportionate punishment. The court noted that this basic term-fixing responsibility of the Authority is independent of the Authority's power to grant parole and of its discretionary power to later reduce the fixed term.

OPERATING UNDER DSL:
Under DSL the sentencing decision is divided between the Legislature and the courts. The Legislature establishes a mitigated (lower), normal (middle) and aggravated (upper) term for each felony, and various enhancements. The judge in each case chooses the actual term within the legislatively imposed constraints.

Arguments both for and against the DSL include, but are not limited to, more equity and uniformity in sentencing, reduced inmate frustration as inmates are cognizant of length of prison and parole terms, lack of clarity and increased complexity, increased plea bargaining, elimination of in-prison rehabilitation programs, burgeoning prison system, and less flexibility in managing the prison population.

CURRENT INDETERMINATE SYSTEM

The indeterminates in the system are referred to as lifers (8,842) and "old ISLs" (22). Attached is a list of the felonies for which an indeterminate term is imposed.

The court imposes the sentence which determines the minimum eligible parole date. The date will vary depending on the offense. The minimum is 7 years for most offenders -- but some offenses set a minimum to life (PC Section 3046). For example, the minimum for second degree murder is 15 years.

The Board of Prison Terms decides suitability for release (PC Sections 3040 et. seq.). During the first year in prison, a

hearing representative meets with the life prisoner and discusses ways to utilize his or her time to enhance the possibility of receiving a parole date at the first parole consideration hearing (Title 15 CCR Section 2267).

During the third year of incarceration, the Board meets with each inmate and reviews the inmate's file, makes recommendations and documents activities and conduct pertinent to granting or withholding post-conviction credit. One year prior to the inmate's eligible parole release date, a panel consisting of a at least two Board commissioners meet with the inmate to set a parole release date.

The hearing covers four major areas: the current commitment offense, preconviction factors, conduct during incarceration, and parole plans. The release date must be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public. The Board has established criteria or matrixes for determining the base terms, including the number of victims of the crime. Then, other factors in mitigation or aggravation, as use of a firearm, multiple offenses, or prior prison terms, are considered.

In making the suitability decision the panel considers numerous factors. Circumstances tending to indicate a prisoner is suitable for parole include: no record of violence as a juvenile; reasonable stable relationships with others; remorse for the offense; significant stress as a cause of the crime; no significant history of violent crimes; present age and age at time of offense; realistic plans for release; good behavior during incarceration.

Factors tending to indicate the prisoner is unsuitable for parole include: commission of the offense in a particularly heinous, atrocious or cruel manner; previous infliction or attempt to inflict serious injury; serious assaultive behavior at an early age; unstable social history; sexually assaulting person in a manner calculated to inflict unusual pain or fear; a history of severe mental problems related to the offense; serious misconduct during incarceration.

The panel or board must set a release date unless it determines the gravity of the current offense(s) or the timing and gravity of current or past offense(s) is such that consideration of the public safety requires a more lengthy period of incarceration and that a parole date cannot be fixed at this time.

If the prisoner is found unsuitable, a parole date will not be set and the prisoner will be scheduled for another parole hearing during the following year. However, if the prisoner has been convicted of more than one offense which involved the taking of a life, the prisoner may not have another parole consideration hearing for three years.

If the prisoner is found suitable, the panel then establishes a period of confinement considering the current offense, earlier offenses, and postconviction conduct. Once a prisoner has received a parole date, the Board meets periodically with the prisoner to review conduct. Once established a parole date may be rescinded or postponed because of disciplinary conduct or new information indicating parole should not occur.

The Governor has the power to request review of any decision concerning the grant or denial of parole, stating whether the request is based on a public safety concern (PC Section 3041.1). The victim or next of kin has the right to appear at any hearing to review or consider parole suitability or setting of a parole date (PC Section 3043).

(B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.

(C) The victim was abused, defiled or mutilated during or after the offense.

(D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.

(E) The motive for the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

(d) Circumstances Tending to Show Suitability. The following circumstances each tend to show that the prisoner is suitable for release. The circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate suitability include:

(1) No Juvenile Record. The prisoner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.

(2) Stable Social History. The prisoner has experienced reasonably stable relationships with others.

(3) Signs of Remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.

(4) Motivation for Crime. The prisoner committed his crime as the result of significant stress in his life, especially if the stress has built over a long period of time.

(5) Lack of Criminal History. The prisoner lacks any significant history of violent crime.

(6) Age. The prisoner's present age reduces the probability of recidivism.

(7) Understanding and Plans for Future. The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release.

(8) Institutional Behavior. Institutional activities indicate an enhanced ability to function within the law upon release.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3041, Penal Code.

2403. Base Term.

(a) General. The panel shall set a base term for each life prisoner who is found suitable for parole. The base term shall be established solely on the gravity of the base crime, taking into account all of the circumstances of that crime. If the prisoner has been received in prison for more than one murder

(b) Matrix of Base Terms for First Degree on or after November 8, 1978.

	CIRCUMSTANCES				
	FIRST DEGREE MURDER Penal Code § 189 (in years and does not include post conviction credit as provided in § 2290)	A. *Indirect* Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force; e.g., shock producing heart attack; a crime partner actually did the killing.	B. *Direct or Victim Contribution* Death was almost immediate *or* resulted at least partially from contributing factors from the victim; e.g., victim initiated struggle or had goaded the prisoner. This does not include victims acting in defense of self or property.	C. *Severe Trauma* Death resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.	D. *Torture* Victim was subjected to the prolonged infliction of physical pain through the use of nondeadly force prior to act resulting in death.
VICTIM	I. *Participating Victim* Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred, e.g., crime partner, drug dealer, etc.	25–26–27	26–27–28	27–28–29	28–29–30
	II. *Prior Relationship* Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, see Category IV.	26–27–28	27–28–29	28–29–30	29–30–31
	III. *No Prior Relationship* Victim had little or no personal relationship with prisoner, or motivation for act resulting in death was related to the accomplishment of another crime; e.g., death of victim during robbery, rape, or other felony.	27–28–29	28–29–30	29–30–31	30–31–32
	IV. *Threat to Public Order or Murder for Hire* The act resulting in the victim's death constituted a threat to the public order include the murder of a police officer, prison guard, public official, fellow patient or prisoner, any killing within an institution, or any killing where the prisoner hired and/or paid another person to commit the offense.	28–29–30	29–30–31	30–31–32	31–32–33

SUGGESTED BASE TERM

(c) Matrix of Base Terms for Second Degree Murder on or after November 8, 1978.

SECOND DEGREE MURDER Penal Code § 189 (in years and does not include post conviction credit as provided in § 2290)	CIRCUMSTANCES		
	A. *Indirect* Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force; e.g., shock producing heart attack, a crime partner actually did the killing	B. *Direct or Victim Contribution* Death was almost immediate or resulted at least partially from contributing factors from the victim, e.g. victim initiated struggle or had goaded the prisoner. This does not include victims acting in defense of self or property	C. *Severe Trauma* Death resulted from severe trauma inflicted with deadly intensity, e.g. beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.
VICTIM I. *Participating Victim* Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred, e.g. crime partner, drug dealer, etc.	15–16–17	16–17–18	17–18–19
II. *Prior Relationship* Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, see Category IV	16–17–18	17–18–19	18–19–20
III. *No Prior Relationship* Victim had little or no personal relationship with prisoner; or motivation for act resulting in death was related to the accomplishment of another crime, e.g. death of victim during robbery, rape or other felony	17–18–19	18–19–20	19–20–21
SUGGESTED BASE TERM			

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3040 and 3041, Penal Code.

HISTORY:

1. Editorial correction filed 10-8-81; effective thirtieth day thereafter (Register 81, No. 41).

2. Amendment of subsection (a) filed 1-20-88; operative 2-19-88 (Register 88, No. 5).

2408. Circumstances in Aggravation of the Adjustment for Other Crimes.

Circumstances which may justify imposition of an adjustment for another crime higher than that suggested in Section 2407 include:

(a) Pattern of Violence. A victim was seriously injured or killed in the course of the other crime, or there was a substantial likelihood of serious injury or death resulting from the acts of the prisoner.

(b) Numerous Crimes. The other crime was one of a series of crimes which occurred during a single period of time, showing a pattern of similar conduct resulting in convictions, but not resulting in adjustments under Section 2407.

(c) Crimes of Increasing Seriousness. The prisoner has committed multiple crimes which indicate a significant pattern of increasingly serious criminal conduct.

(d) Independent Criminal Activity. The other crime and its objective were independent of the base crime or the other crime was committed at a different time and place, indicating a significant pattern of criminal behavior rather than a single period of aberrant behavior.

(e) Status. The prisoner was on probation or parole or was in custody or had escaped from custody when the crime was committed.

(f) Vulnerability. The victim was particularly vulnerable.

(g) Other. The other crime included any other circumstances in aggravation including those listed in the Sentencing Rules for the Superior Courts.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 669, 1170, 3040 and 3041, Penal Code: Sentencing Rules for the Superior Courts.

2409. Circumstances in Mitigation of the Adjustment for Other Crimes.

Circumstances which may justify imposition of an adjustment for another crime lower than that suggested in Section 2407, or which may justify no adjustment, include:

(a) Successful Completion of Probation or Parole. The prisoner's performance on probation or parole for the other crime was good, and the prisoner was free of criminal convictions for a reasonable period of time following completion of probation or parole.

(b) Insignificant Prior Record. The other crime indicates an insignificant pattern of prior criminal behavior. For example, the other crime is unrelated to the principal offense in time, in the kind of criminal conduct involved, or in the apparent motivation or cause of the criminal conduct.

(c) Probation. The prisoner was granted probation after conviction of the other crime.

(d) Other. The other crime included any other circumstances in mitigation including those listed in the Sentencing Rules for the Superior Courts.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 669, 1170, 3040 and 3041, Penal Code: Sentencing Rules for the Superior Courts.

2410. Postconviction Credit.

(a) General. Life prisoners may earn postconviction credit for each year spent in state prison from the date the life term starts. Prior to the initial parole consideration hearing life prisoners shall have documentation hearings as provided in Section 2269.1. At the documentation hearings, the board shall document the prisoner's performance, participation, behavior and other conduct as specified in subsection (c) of this section. Credit shall not be granted or denied at these hearings. The documentation shall be used by the panel which establishes a parole date to determine how much, if any, credit should be granted for the years served prior to the establishment of the parole date. Once a parole date is established, postconviction credit for time served since the last hearing shall be considered at the progress hearings scheduled as provided in Section 2269.

The board shall consider each case individually in determining the amount of credit. This section provides guidelines for granting credit but a panel may grant more or less credit as appropriate.

(b) Amount of Credit. Postconviction credit shall be granted to life prisoners in a manner which allows similar amounts of time to prisoners in similar circumstances. The suggested amount of postconviction credit is zero to 4 months for each year served since the date the life term started excluding any time during which service of the life term is tolled.

The board may grant more or less than 4 months annual postconviction, credit when the prisoner's performance, participation or behavior warrants such adjustment of credit. Less than 4 months credit may be granted if the prisoner fails to meet the general expectations set forth in Section 2410(c). More than 4 months credit may be granted if the prisoner demonstrates exceptional performance in a work assignment, exceptional participation in self-help or rehabilitative programs, or other exemplary conduct. If the panel grants more than 4 months of postconviction credit for any year, the case shall be reviewed as provided in Sections 2041–2043.

(c) Criteria. In determining the amount of postconviction credit to be granted, the panel shall consider the following:

(1) Performance in Institutional Work Assignments. All life prisoners are presumed to work and to perform satisfactorily in work assignments (see CDC Rules 3040 and 3041). Lack of a work assignment shall not necessarily prevent the granting of postconviction credit. The panel shall consider the nature and availability of work assignments at the institution, the prisoner's custody status, and any other impediments to the prisoner's receiving work assignment.

(2) Participation in Self-Help and Rehabilitative Programs. All life prisoners are presumed to participate in programs for self development (refer to CDC Rules 3040 and 3041). Lack of program participation shall not necessarily prevent the granting postconviction credit. The panel shall consider the nature and availability of programs at the institution, the prisoner's custody status, and any other impediments to the prisoner's participation in programs.

(3) Behavior in the Institutional Setting. All life prisoners are presumed to behave in a disciplinary-free manner, in accordance with state law and departmental regulations (refer to CDC Rules 3000–3021). However, a minor disciplinary offense shall not necessarily prevent the granting of postconviction credit.

(d) Credit Not Granted. No annual postconviction credit shall be granted in the case of any prisoner who commits serious or numerous infractions of departmental regulations, violates any state law, or engages in other conduct which could result in rescission of a parole date (see Section 2451).

Consistent unsatisfactory performance in work assignments, consistent failure to engage in program participation, or consistent overall negative behavior demonstrated by numerous minor disciplinary reports may, individually or cumulatively, justify the withholding of annual postconviction credit which otherwise could have been granted.

(e) Change in Parole Date. Once postconviction credit is granted for particular year of imprisonment, the credit shall be applied to any new term established after rescission or reconviction after a reversal.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3040 and 3041, Penal Code. *In re Stanley*, 54 Cal.App.3d 1030 (1976).

PART II

APPENDIX II-A

ISL CRIMES

Life crimes, parole possible:

	OFFENSE		MEPD	CREDIT	EFFECTIVE
PC	187	Murder	15/25	one-third	11/8/78
	187/664	Attempted murder	7	NO	1/1/87
	187/182	Murder conspiracy	15/25	one-third	11/8/78
	190(a)	Murder 2d, Peace Officer	25	NO	6/5/88
	190.05	Murder 2d w/prior murder	15	NO	1/1/86
	205	Aggravated mayhem	7	NO	1/1/88
	209	Kidnap	7	NO	7/1/77
	667.51	Habitual sex offender	15	one-half	1/1/82
	667.7	Habitual offender	20	one-half	
	667.75	CS w/prior CS	17 (or determinate term if greater) NOT MANDATORY	one-half	1/1/88
	217.1(b)	Attempted assassination	15	one-half	1/1/84
	219	Train wrecking	7	NO	7/1/77
	4500	Assault by life prisoner	9	NO	8/11/77
	12310	Exploding destructive device	7	NO	8/11/77

NOTE: Those with minimum terms of 7 or 9 years do not receive credits. Briggs Initiative murderers receive good-time credits (one-third); others receive work-time (one-half) credits.

Life crimes, parole not possible (LWOP):

PC	128	Perjury resulting in conv of dth/LWOP crime
	187	Special circumstances murder
	190.05	Murder 2d w/prior murder
	209	Kidnap: GBI or death or risk thereof
	218	Trainwrecking
	219	Trainwrecking w/ death
	4500	Assault by life prisoner resulting in death
M&VC	1672(a)	Sabotage

See *People v. CRB (Phoenix)* 96 Cal.App.3d 792: Pre-July 1, 1977 death and LWOP kidnap changed to life with by DSL.

DISTRIBUTION OF OFFENSES AND INSTITUTIONS STATEWIDE 34
FOR LIFE PRISONERS AS OF MAR 3, 1990
7:33 SATURDAY, MARCH 3, 1990

OFFENSE	FREQUENCY	PERCENT	CUMULATIVE FREQUENCY	CUMULATIVE PERCENT
P187	3403	45.7	3403	45.7
P187 2ND	3242	43.5	6645	89.2
P187(664)	46	0.6	6691	89.9
P209	305	4.1	6996	94.0
P209(B)	363	4.9	7359	98.8
P219	1	0.0	7360	98.8
P4500	22	0.3	7382	99.1
182/P187	49	0.7	7431	99.8
182/P187 2	12	0.2	7443	100.0
182/P209	3	0.0	7446	100.0

PART II

APPENDIX II-B

BOARD OF PRISON TERM'S MANAGEMENT INFORMATION SECTION'S STATISTICS PERTAINING TO PAROLE VIOLATION RETURN RATES FROM 1970 THRU 1988

BOARD OF PRISON TERM'S MANAGEMENT INFORMATION SECTION'S
STATISTICS PERTAINING TO PAROLE VIOLATION RETURN RATES
FROM 1970 thru 1988

BOARD OF PRISON TERMS
MANAGEMENT INFORMATION SECTION

YEAR	FELON PAROLE POPULATION	TOTAL PAROLE VIOLATORS RETURNED TO PRISON	RETURN RATE
1970	14,927	2,563	17.17%
1971	15,808	2,396	15.16%
1972	14,848	3,245	21.85%
1973	12,996	3,345	25.74%
1974	11,549	2,383	20.63%
1975	14,556	1,649	11.33%
1976	13,049	2,233	17.11%
1977	13,258	2,031	15.32%
1978	9,102	2,585	28.40%
1979	9,382	2,558	27.27%
1980	10,460	2,995	28.63%
1981	11,009	3,885	35.29%
1982	13,176	6,009	45.61%
1983	19,133	8,435	44.09%
1984	23,987	11,409	47.56%
1985	28,075	16,294	58.04%
1986	31,730	23,819	75.07%
1987	40,242	31,584	78.49%
1988	48,427	42,472	87.70%

*Data from 'California Prisoners & Parolees - 1988,' published by Dept. of Corrections.

BPT/MIS (22-Mar-90)

PART II

APPENDIX II-C

DETERMINATE SENTENCING AND INMATE ASSAULTS

State of California

Department of Corrections

Memorandum

To Ned Cohen
Penal Code Committee

Date March 27, 1990

Subject: Determinate Sentencing and Inmate Assaults

From Administrative Services Division

This is in response to your request for assault rate data covering an ISL (Indeterminate Sentence Law) and a DSL (Determinate Sentence Law) time period. The factors mentioned below as possibly contributing to either increases or decreases in inmate assaults are only suggestive. This is not a comprehensive list of all factors that may have affected prison violence. Hopefully, the discussion below shows that there is no simple cause and effect relationship between the implementation of the Determinate Sentencing Law and the increase in prison violence.

ISL vs. DSL Assault Rates

The ISL time period selected was calendar years 1975 and 1976. The DSL time period selected was calendar years 1985 and 1986. Only male felons in the 1975-76 assaulters who were not in prison for Murder 1st, Murder 2nd, or Kidnapping for Robbery or Ransom with a Life, Life Without the Possibility of Parole (LWOP), or a Death Sentence were included. For the calendar years 1985-86, male felon assaulters with Life, LWOP, and Death Sentences were also excluded. Unidentified assaulters were also excluded from both groups.

The number of male felon assaulters in the calendar years 1975-76 group was 574, with an annualized rate of 1.39 per 100 average daily male institution population. The number of male felon assaulters in the calendar years 1985-86 group was 4,893, with an annualized rate of 5.24 per 100 average daily male institution population. It should be pointed out, however, that the rate of assaults in CDC institutions increased steadily from 1970 through 1984 (see attached tables), not just since the passage of DSL in 1977. Under ISL the rate increased from 0.5 in 1970 to 2.0 in 1977. Under DSL the rate increased from 2.5 in 1978 to 4.7 1984. Since 1984, the rate of assaults has been decreasing. Thus, the rate quadrupled in the first seven-year period, but then less than doubled in the next six years. Given the above figures, it cannot be concluded that the increase from 1978 to 1984 was due to the change from ISL to DSL sentencing.

There are many factors that may have contributed to the increase. Some revolve around changes in the prison population, such as a possible increase in gang activity/membership. It might also be assumed by some that if there were an increase in felons who were convicted of violent offenses, the assault rate would also go up. However, the percentage of the male felon prison population who were in prison for violent offenses decreased from 60.7 in 1975 to 53.3 in 1985. If prisoners with violent commitment offenses are more

likely to assault, then the rate of assaulters should have decreased, not increased during that time period.

Other possible causes concern changes within the Department of Corrections. The relatively small credit loss penalties that could be assessed under DSL until 1983 may have contributed to the increase in the rate of assaults after 1977. Also, the rise in overcrowding during the early eighties may have contributed to the increase in the assault rates.

Since 1984, the rate of assaults has decreased. There are many factors that may have contributed to this decline. The prison population may have changed, including the possibility of a decrease in gang activity or membership. The percentage of the male prison population with violent offenses decreased from 60.1 in 1983 to 46.5 in 1988, which may be contributing to the decline in assault rates. Also, the increase in credits an inmate could lose for assaulting someone increased in 1983 from 45 days to 180 days. Since then, it has been increased further to 360 days. The threat of serving more time may have contributed to the decline in violence.

The new classification system that went into effect in the early eighties may also have helped reduce assaults, as well as the opening of new prisons, especially level IV prisons and SHU units. It is also likely that the improvement in selection and training of Correctional Officers in recent years has helped to reduce the rate.

Short- vs. Long-Term Assault Rates

One might expect that inmates with longer terms are more likely to assault than inmates with shorter terms. In order to see whether or not this assertion can be supported, a comparison was made between the DSL male felon at-risk population and DSL male felon assaulters.

The male felon at-risk group includes the male felon DSL population on December 31, 1987 who did not have a prior release and male felon DSL admissions during calendar year 1988 (for a total of 65,525). From the DSL felon at-risk group, 1,989 male felons were identified as assaulters in 1988 incidents.

The mean term for the male felon assaulter study group was 94 months, while the mean term for the total at-risk group was 76 months. Even on medians the assaulter study group, with a median of 60 months, exceeds the comparison group's median of 48 months. Though male felon assaulters typically have longer terms, 58 percent of the male felon assaulters have terms of 5 years or less.

There are many problems with interpreting these findings as indicating that individuals with longer terms are more likely to assault. First, individuals with longer terms are probably more likely to have violent commitment offenses. If inmates with violent commitment offenses are more likely to become aggressive in prison, then it may be their propensity toward violence rather than their longer terms that lead to their over-representation among the aggressors in incidents.

Assault rates were calculated for the half of the at-risk group with lower terms (less than 4 years) and compared to the half with terms of 4 years or longer. The rates per 100 at-risk were 2.1 for lower term inmates vs. 3.9 for longer term inmates.

Additional tables for the male felon at-risk group and the male felon assaulter group by term are attached.

RITA STAPLETON
Assistant Director
Legislative Liaison Office

Attachments

Estimates & Statistical Analysis Section
Offender Information Services Branch
Department of Corrections

Youth and Adult Correctional Agency
State of California
June 19, 1989

Table 5

ASSAULT INCIDENTS AND RATE PER 100 AVERAGE DAILY INSTITUTION POPULATION
BY INSTITUTION AND YEAR

1970 - 1988

Institution	1970		1971		1972		1973		1974		1975		1976	
	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pops.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.
Total	145	.5	173	.8	258	1.3	289	1.4	341	1.4	322	1.4	335	1.7
Total Men	138	.5	168	.8	245	1.3	279	1.4	320	1.4	307	1.4	304	1.6
CCC	9	.4	9	.5	12	1.2	4	.6	6	.6	8	.7	6	.6
SCC 1/	2	.1	1	.1	10	.6	6	.3	7	.3	8	.4	16	1.0
CIM	4	.2	4	.2	16	.7	6	.3	23	1.0	43	1.7	35	1.5
CCI	2	.2	7	.6	12	1.1	3	.3	6	.5	7	.6	12	1.2
CMF	5	.2	8	.4	35	1.9	34	1.8	15	.8	18	1.0	27	1.5
CMC	23	.6	20	.7	38	1.5	34	1.3	30	1.1	14	.6	22	.9
CRC-Men	3	.2	4	.2	9	.6	5	.3	3	.2	3	.2	7	.4
CTF	23	.9	21	1.1	26	1.3	37	1.5	34	1.1	40	1.3	69	2.9
Central	18	1.2	17	1.8	12	1.2	24	1.8	10	.7	20	1.6	39	3.3
North	5	.5	4	.4	14	1.5	13	1.2	24	2.0	18	1.6	29	3.5
South	0	-	0	-	-	-	0	-	0	-	2	.5	1	.3
DVI	23	1.2	29	1.9	55	4.1	60	4.2	90	5.9	70	4.5	34	3.0
Folsom	11	.5	12	.6	13	.9	18	1.0	17	.8	17	.8	22	1.4
San Quentin	33	.9	53	1.9	19	1.1	72	3.0	89	2.8	79	3.4	54	2.7
Total Women	7	.7	5	.6	13	1.7	10	1.2	21	2.3	15	1.5	31	2.8
CIW	6	.8	5	.8	13	2.3	8	1.3	21	3.0	14	2.0	30	4.0
CRC-Women	1	.3	0	-	0	-	2	.9	0	-	1	.4	1	.3

Note: These data are based upon incident reports submitted by the institutions to the Offender Information Services Branch.

1/ Includes the Southern Conservation Center in 1970.

Table 5 (Cont'd)

ASSAULT INCIDENTS AND RATE PER 100 AVERAGE DAILY INSTITUTION POPULATION
BY INSTITUTION AND YEAR

1970 - 1988

Institution	1977		1978		1979		1980		1981		1982		1983	
	Number of Assaults	Rate Per 100 Average Inst. pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.
Total	418	2.0	517	2.5	698	3.1	775	3.3	927	3.5	1,105	3.6	1,338	3.7
Total Men	382	2.0	495	2.6	671	3.2	734	3.3	887	3.5	1,073	3.6	1,276	3.7
CCC	30	3.3	26	3.1	33	3.1	55	4.8	36	2.8	49	2.7	67	2.6
SCC	21	1.3	13	.8	32	1.6	43	2.0	28	1.9	48	1.7	38	1.3
CIM	37	1.7	53	2.3	57	2.1	75	2.7	72	2.3	89	2.4	75	1.8
CCI	14	1.3	18	1.7	24	2.1	14	1.1	29	1.9	27	1.7	26	1.5
CMF	29	1.6	29	1.6	39	2.0	37	1.9	44	1.9	54	2.0	26	.9
CMC	25	1.0	35	1.4	29	1.2	31	1.2	46	1.8	40	1.5	44	1.6
CRC-Men	4	.2	7	.6	8	.8	20	1.6	40	2.7	62	2.8	100	3.9
CTF	104	4.0	148	5.6	266	9.2	180	6.0	156	4.5	147	3.7	206	4.3
Central	57	4.4	98	7.6	170	12.4	114	7.7	123	6.8	109	5.2	153	6.6
North	44	4.7	47	4.7	93	8.1	62	5.8	30	2.6	35	2.6	46	2.3
South	3	.8	3	.9	3	.8	4	.9	3	.6	3	.6	7	1.3
DVI	41	3.4	57	4.7	65	4.8	92	6.2	127	7.3	143	6.4	184	6.7
Folsom	23	1.3	26	1.7	38	2.3	57	3.5	89	4.6	139	5.2	181	5.2
San Quentin	54	2.5	83	3.6	80	3.0	130	4.4	220	7.3	275	8.4	329	10.0
Total Women	36	3.3	22	2.0	27	2.2	41	3.3	40	3.0	32	2.2	62	3.6
CIW	34	4.7	22	2.8	27	2.8	40	4.3	35	3.6	30	2.8	52	4.0
CRC-Women	2	.5	0	-	0	-	1	.3	5	1.4	2	.6	10	2.2

Note: These data are based upon incident reports submitted by the institutions to the Offender Information Services Branch.

Table 5 (Cont'd)
ASSAULT INCIDENTS AND RATE PER 100 AVERAGE DAILY INSTITUTION POPULATION
BY INSTITUTION AND YEAR
1970 - 1988

Institution	1984		1985		1986		1987		1988	
	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.	Number of Assaults	Rate Per 100 Average Inst. Pop.
Total	1,882	4.7	1,788	3.9	1,889	3.6	2,155	3.4	2,041	2.9
Total Men	1,813	4.8	1,708	4.0	1,774	3.5	2,061	3.5	1,961	3.0
CCC	61	2.2	59	1.9	56	1.6	68	1.5	79	1.7
SCC	66	2.1	63	1.8	87	2.4	97	2.1	76	1.5
CIM	89	2.0	146	3.0	183	3.4	174	2.8	188	3.0
CCI	61	3.0	48	2.1	127	3.3	238	4.9	154	3.3
Chuckawalla SP 2/	-	-	-	-	-	-	-	-	1	-
CMF	31	.9	103	2.0	111	1.5	228	2.8	239	3.3
CMC	66	1.8	126	2.2	118	1.8	123	1.7	103	1.8
CRC-Men	99	3.5	129	4.4	88	2.6	80	2.2	61	1.7
Avenal-Men 1/	-	-	-	-	-	-	45	-	92	2.6
CTF	277	4.9	199	3.4	191	3.2	189	3.2	172	3.1
Central	186	6.9	110	4.1	116	4.2	118	4.4	96	3.8
North	67	3.0	77	3.3	64	2.6	57	2.4	64	2.8
South	24	3.1	12	1.6	11	1.4	14	1.8	12	1.5
CSP-Corcoran 2/ ...	-	-	-	-	-	-	-	-	54	-
DVI	346	11.0	160	5.0	239	7.0	142	4.9	48	1.9
Folsom	249	7.3	335	10.7	342	10.2	458	8.3	426	6.3
Mule Creek SP 1/	-	-	-	-	-	-	9	-	34	1.9
R.J. Donovan CF 1/	-	-	-	-	-	-	36	-	111	3.9
San Quentin	468	14.2	340	10.0	232	6.6	174	5.8	123	4.0
Total Women	69	3.4	80	3.2	115	3.7	94	2.5	80	1.9
Avenal-Women 2/ ...	-	-	-	-	-	-	-	-	0	-
CIW	64	4.3	65	3.7	100	4.9	83	3.6	64	2.8
CRC-Women	5	.9	15	2.4	14	1.8	9	0.9	6	0.7
NCWF 1/	-	-	-	-	-	-	1	-	7	1.0
SCC-Camps-Women ...	-	-	0	-	1	.4	1	0.3	3	1.0

Note: These data are based upon incident reports submitted by the institutions to the Offender Information Services Branch.

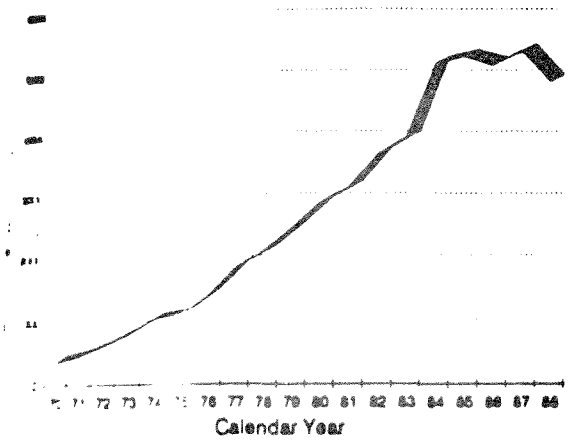
1/ No rate was calculated for Avenal-Men, Mule Creek, R.J. Donovan CF, or NCWF for 1987 since they started receiving inmates in 1987.

2/ No rate was calculated for Chuckawalla Valley SP, CSP-Corcoran, or Avenal-Women for 1988 since they started receiving inmates in 1988.

BEHAVIOR OF INMATES IN CDC INSTITUTIONS

During Calendar Year 1988:

Total Number of Incidents
Calendar Years 1970 through 1988



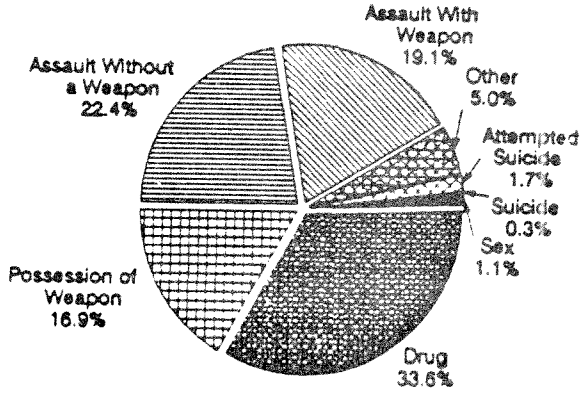
NUMBER AND RATE OF INMATE INCIDENTS

- The number of inmate incidents increased steadily from 1970 through 1987. Incidents decreased in 1988 from a high of 5,317 in 1987 to 4,925 in 1988.
- The rate of incidents per 100 average daily institution population (ADP) peaked in 1984 at 12.73. Since then, the rate has declined to 7.07 in 1988.

TYPE OF INCIDENTS

- Assault incidents dropped from 2,155 in 1987 to 2,041 in 1988.
- Possession of Weapon incidents dropped from 1,053 in 1987 to 830 in 1988.
- Drug incidents increased slightly from 1,642 in 1987 to 1,657 in 1988.

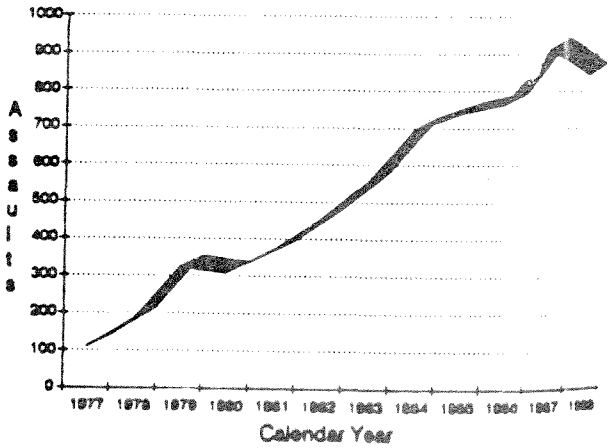
Type of Incidents
Calendar Year 1988



ASSAULTS ON STAFF

- Inmate assaults on staff dropped from 914 in 1987 to 842 in 1988.
- This is the first time since 1980 that assaults on staff have decreased.
- The rate of assaults on staff per 100 average daily institution population peaked in 1984 at 1.7. Since 1984 the rate has decreased each year reaching 1.2 in 1988.

Number of Inmate Assaults on Staff
Calendar Years 1977 through 1988

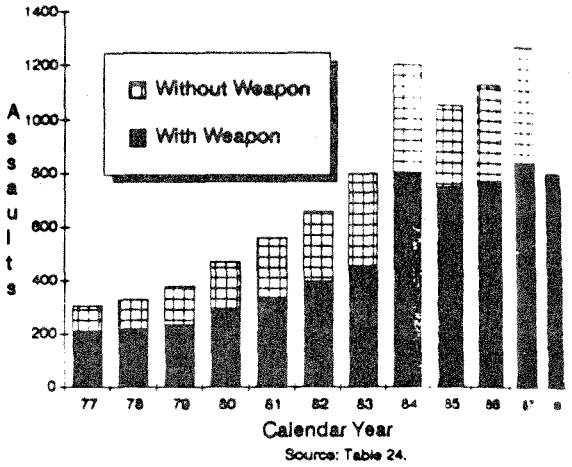


BEHAVIOR OF INMATES IN CDC INSTITUTIONS

ASSAULTS ON INMATES

- The number of inmate assaults on inmates decreased from 1,291 in 1987 to 1,243 in 1988.
- Assaults with weapons decreased from 852 in 1987 to 815 in 1988.
- Assaults without weapons decreased from 439 in 1987 to 428 in 1988.

Number of Inmate Assaults on Inmates
Calendar Years 1977 through 1988

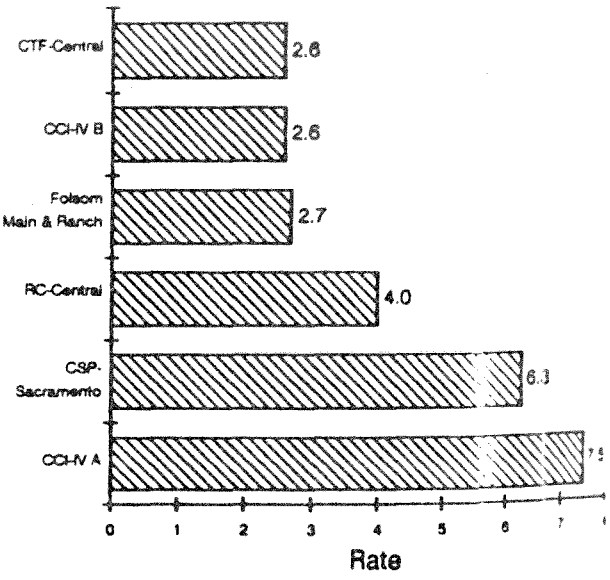


Source: Table 24.

RATE OF INMATE ASSAULTS BY INSTITUTION

- The California Correctional Institution IV-A facility had the highest rate of inmate assaults on inmates at 7.5 per 100 average daily institution population (ADP) in 1988. CCI-IV-A was also highest in 1987 with a rate of 8.7.
- New Folsom (CSP-Sacramento) had the next highest rate of assaults at 6.3. New Folsom also had the second highest rate in 1987 at 7.5.
- The rate of inmate assaults on inmates at San Quentin dropped from 3.9 in 1987 to 2.2 in 1988.
- While the inmate assault rate dropped at most institutions, the rate at CIM's Reception Center Central increased from 2.5 in 1987 to 4.0 in 1988.

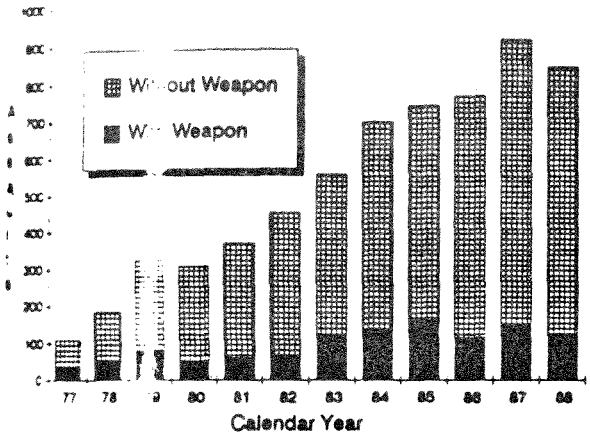
Inmate Assaults on Inmates
Rate per 100 Institution ADP
Six Highest Institutions
Calendar Year 1988



Source: Table 25.

BEHAVIOR OF INMATES IN CDC INSTITUTIONS

Number of Inmate Assaults on Staff
Calendar Years 1977 through 1988

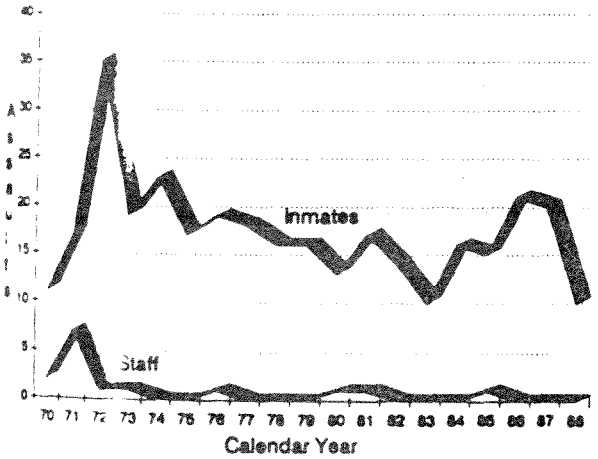


Source: Table 22.

INMATE ASSAULTS WITH AND WITHOUT WEAPONS ON STAFF

- Inmate assaults with weapons on staff decreased from 151 in 1987 to 124 in 1988.
- Assaults without weapons on staff decreased from 763 in 1987 to 718 in 1988.
- Assaults with weapons on staff dropped 18% in 1988.
- Assaults without weapons on staff dropped 6% in 1988.

Number of Fatal Assaults
Against Staff and Inmates
Calendar Years 1970 through 1988



Source: Table 23.

FATAL ASSAULTS

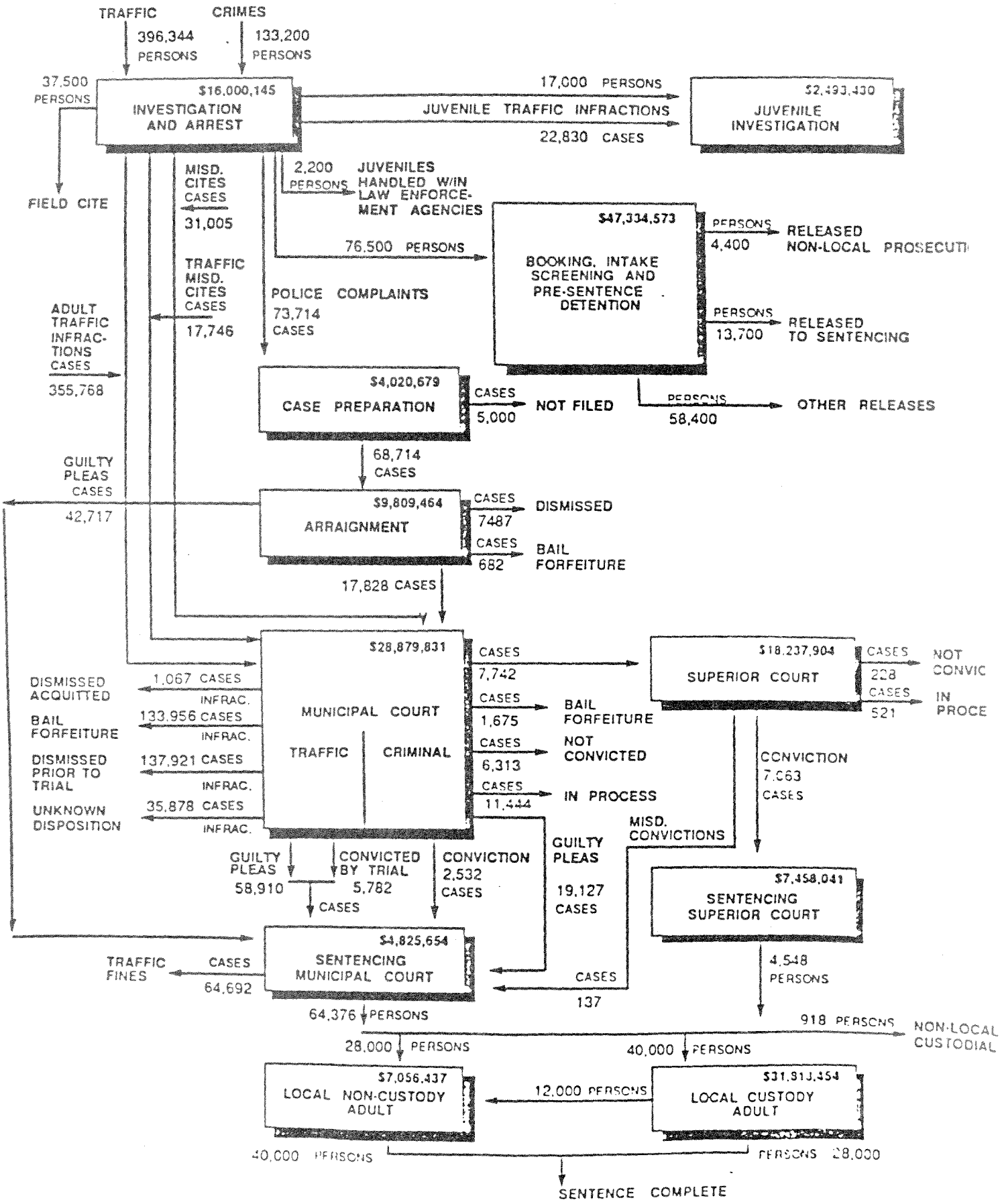
- The number of inmates killed as a result of inmate assaults dropped from 20 in 1987 to 10 in 1988.
- No staff were killed by inmates during 1988.
- The last staff fatality occurred in 1985.

PART II

APPENDIX II-D

DISCRETION AT THE TRIAL COURTS LEVEL

DISCRETION AT THE TRIAL COURTS LEVEL



Santa Clara County Justice System (JUSSIM) Flow Diagram
1989/90 Recommended Budget & 1988/89 Provisional Case/People Flows

PART II

APPENDIX II-E

BUREAU OF CRIMINAL STATISTICS, MARCH 1990
CALIFORNIA CRIME INDEX

BCS

PRELIMINARY REPORT

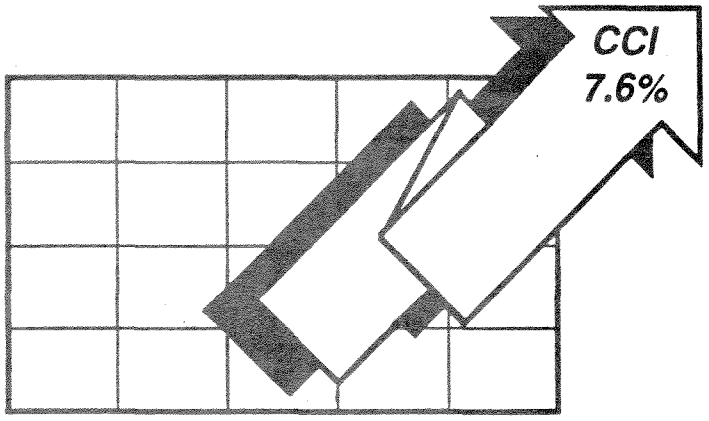
BUREAU OF CRIMINAL STATISTICS MARCH 1990

CRIME 1989

IN SELECTED CALIFORNIA LAW ENFORCEMENT JURISDICTIONS

JANUARY THROUGH DECEMBER

This report compares preliminary counts of crimes reported by 50 of the 51 California law enforcement agencies serving populations of 100,000 or more in 1989 with those of the same period in 1988. This crime information represents approximately 62 percent of the total crime information reported in the state. **Data used in this report are not adjusted by population.** Statewide adjusted data (rates) appear in annual *Crime and Delinquency in California* publications.



The **CALIFORNIA CRIME INDEX (CCI)** offenses are willful homicide, forcible rape, robbery, aggravated assault, burglary, and motor vehicle theft. In 1989, the number of reported offenses was up 7.6 percent from 1988.

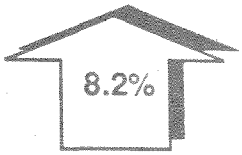
HIGHLIGHTS

- All six of the California Crime Index offenses increased. The largest increase was in robbery crimes (14.7 percent).
- The increase in violent crimes was greater than the increase in property crimes (12.2 versus 5.7 percent).
- Thirty-six of the selected agencies reported increases in the total California Crime Index offenses.

The CALIFORNIA CRIME INDEX

WILLFUL HOMICIDE - *The willful (nonnegligent) killing of one human being by another. Murder and nonnegligent manslaughter are included.*

The number of willful homicides reported for 1989 increased 8.2 percent compared to 1988.

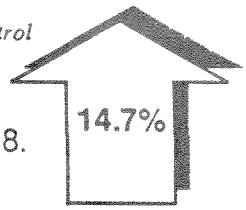


FORCIBLE RAPE - *The carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape by force or threat of force are included.*

Forcible rapes reported increased 3.0 percent in 1989 compared to 1988.

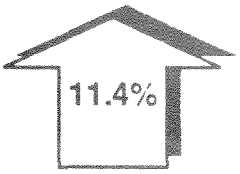
ROBBERY - *The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.*

In 1989, reported robberies increased 14.7 percent compared to 1988.



AGGRAVATED ASSAULT - *The unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm.*

The number of aggravated assaults reported in 1989 increased 11.4 percent compared to 1988.



BURGLARY - *The unlawful entry of a structure to commit a felony or theft. Attempted forcible entry is included.*

In 1989, reported burglaries increased 1.3 percent compared to 1988.

MOTOR VEHICLE THEFT - *The theft or attempted theft of a motor vehicle.*

An 11.7 percent increase in motor vehicle theft was reported in 1989 compared to 1988.